

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OCT 31 1985

HESTON OIL COMPANY,

Plaintiff,

vs.

WILLIAM LLOYD WALSH, et al.,

Defendants.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 82-C-1100-E ✓

O R D E R

THIS MATTER comes now before the Court on the application of Plaintiff Heston Oil Company for attorney fees as the prevailing party on both its second cause of action and on Defendant's counterclaims.

An evidentiary hearing on the issue of attorney fees was held on October 11, 1985. After consideration of the testimony taken at that hearing and a careful review of the pleadings and the applicable law the Court finds:

Allowance of attorney fees in a diversity case is a question of state law. Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 259 at n. 31, 95 S.Ct. 1612, 1622 (1975). Under Oklahoma law, absent specific statutory authority, a prevailing party in an action based on contractual liability is not entitled to an award of attorney fees.

Plaintiff contends that count II of his complaint, on which it prevailed involved an open account therefore entitling Plaintiff to an award of reasonable attorney fees under 12 O.S. §

936. Section 936 provides that:

In any civil action to recover on an open account, a statement of account, account stated, note, bill negotiable instrument, or contract relating to the purchase or sale of goods, wares, or merchandise, or for labor or services, unless otherwise provided by law or the contract which is the subject to the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be taxed and collected as costs.

Based upon the record and the Court's findings of fact and conclusions of law entered in this action, the Court finds that Plaintiff's recovery on its claim resulted from the Court's determination of Defendant's contractual liability pursuant to certain separate oil and gas contracts. The record does not support Plaintiff's position that its recovery was based on an existing open account between Plaintiff and Defendant. The Court therefore finds that Plaintiff is not entitled to attorney fees under § 936.

The parties do not dispute and the Court finds that Plaintiff Heston is entitled to an attorney's fee award under 15 U.S.C. § 77k(e) as the prevailing party in the securities fraud counterclaim asserted by Defendant Walsh.

The Court must now determine a reasonable attorney fee for Plaintiff's successful defense of the securities fraud claim. The Tenth Circuit, in the recent decision of Salone v. United States, 645 F.2d 875 (1981) held that the standards set forth in Johnson v. Georgia Highway Express, 488 F.2d 714 (5th Cir. 1974) should generally be applied by trial courts where attorney's fees

are authorized. The standards set forth in Johnson include the following:

1. The time and labor required of the attorney.
2. The novelty and difficulty of the questions.
3. The skill requisite to perform the legal service properly.
4. The preclusion of other employment by the attorney due to acceptance of the case.
5. The customary fee.
6. Whether the fee is fixed or contingent.
7. Time limitations imposed by the client or the circumstances.
8. The amount involved.
9. The experience, reputation, and ability of the attorneys.
10. The "undesirability" of the case (in applicable actions).
11. The nature and length of the professional relationship with the client.
12. Awards in similar cases.

The standards were elaborated on in Ramos v. Lamm, 713 F.2d 546 (10th Cir. 1983) where the Court stated that while the factors set forth in Johnson are useful, an articulation of such factors "... does not itself conjure up a reasonable dollar figure in the mind of a district judge. The Court provided guidance for translating relevant factors into a specific monetary award.

With Johnson and Ramos as guides, the Court now has the difficult task of determining the amount of attorney fees to be assessed in this case.

The starting point for determining a reasonable fee is the number of hours spent multiplied by a reasonable hourly rate. Ramos at 552 (citing Hensley v. Eckerhart, \_\_\_\_\_ U.S. \_\_\_\_\_ at \_\_\_\_\_, 103 S.Ct. at 1939).

The parties have stipulated as to the amount of time spent by Plaintiff in maintaining this lawsuit and defending against

the counterclaims brought by Defendant. The total amount of time spent is shown to be 311.25 hours. Counsel for Plaintiff testified before the Court that in his honest estimation after reviewing all his files and documentation relating to this case that approximately 40% of the total amount of time (or 124.5 hours) was spent on Plaintiff's defense against Defendant's security law counterclaim.

Under Ramos the Court cannot blindly accept the amount of time actually spent as reasonable. The Court must make a separate finding as to what a reasonable amount of time would be based upon the experience of the lawyers involved, the complexity of the issues, any duplication in services, etc.

While several attorneys and law clerks from Mr. Mann's lawfirm provided assistance in preparation of this case, Mr. Douglas Mann was the principal attorney in this matter. Testimony having been given that 40% of the total amount of time expended in this case represented work on the securities counterclaim raised by Defendant Walsh, the total hours expended by Mr. Mann in defense of the securities counterclaim is 111.20 hours, the total amount of time spent by other members of his firm in assisting him on this defense is 13.3 hours. Based upon his previous appearances before this Court, the Court finds Douglas Mann to be a competent attorney and further finds that he ably represented his client in this litigation. This action involved a dispute as to the parties' obligations under several oil and gas contracts. Complex issues were raised by both parties and a considerable amount of skill was required by counsel to

adequately represent their clients. This case was in litigation for over two years and consumed a substantial amount of counsels' time thereby precluding the acceptance of other employment. The fees in this matter were fixed, not contingent and based upon the fees awarded in comparable cases this Court finds that the fees charged fall within the purview of reasonable fees in view of the services performed and the skill of the individual attorneys for whose services fees were incurred. Thus, the Court determines that for J. Douglas Mann \$130 per hour is a reasonable fee; for John E. Howland \$110 per hour is a reasonable fee; for A. F. Ringold \$150 per hour is a reasonable fee; for Jerry A. Richardson \$75 per hour is a reasonable fee; for Mark S. Rains \$65 per hour is a reasonable fee.

Use of the services of law clerks may be included in attorney fee awards where those services are not already reflected in the normal office overhead in the area. Ramos, 713 F.2d at 558. The Court finds that the services rendered by law clerks in this matter involved one fifteen minute telephone call and one thirty minute trip to the courthouse to file a pleading. Such tasks should be reflected in office overhead expenses and therefore would not properly be included in an attorney fee award.


In the Court's view the remaining Johnson factors are not applicable under the circumstances in this matter. There is no indication that counsel was performing under time limitations and this case was not deemed to be "undesirable".

At the attorney fee hearing held in this matter Mr. Mann

presented the Court with an additional billing sheet representing the time he spent in researching and drafting Plaintiff's reply brief on the attorney fee issue was 5 hours. At a billable rate of \$130 per hour the fee incurred is \$650.00. The Court finds however that Plaintiff's counsel is only entitled to that portion of time spent in preparing Plaintiff's reply brief as it addresses entitlement to attorney fees for Defendant's counterclaim and having carefully reviewed Plaintiff's brief the Court finds that 20% of it addresses fee entitlement for the securities counterclaim. Therefore Plaintiff would be entitled to \$130 as a reasonable attorney fee for preparing its reply brief.

In conclusion the Court finds that 40% of the total amount charged or \$15,120.38 is a reasonable sum for attorney fees in defending against the securities law counterclaim brought by Defendant Walsh. Having found no duplicative or unnecessary services by the attorneys involved no reduction of this fee is required.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff recover a reasonable attorney fee of \$15,250.38 as the prevailing party in the securities law counterclaim brought by Defendant.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 31 1985

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PRYOR STOCKMANS AUCTION, INC.,

Defendant.

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-183-E ✓

NOTICE OF DISMISSAL

COMES NOW the United States of America by  
Layn R. Phillips, United States Attorney for the Northern  
District of Oklahoma, Plaintiff herein, through Peter Bernhardt,  
Assistant United States Attorney, and hereby gives notice of its  
dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure,  
of this action with prejudice.

Dated this 31st day of October, 1985.

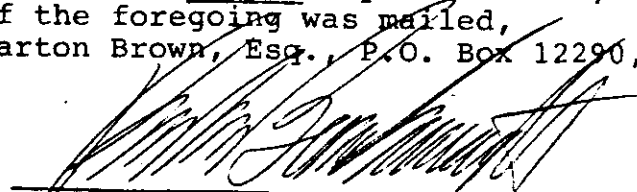
UNITED STATES OF AMERICA

LAYN R. PHILLIPS  
United States Attorney

PETER BERNHARDT  
Assistant United States Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 31st day of October,  
1985, a true and correct copy of the foregoing was mailed,  
postage prepaid thereon, to: Barton Brown, Esq., P.O. Box 12290,  
Overland Park, Kansas 66212.

  
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 31 1985

MAGGIE WILLIAMS,

Plaintiff,

vs.

CHRIS HORNER,

Defendant.

No. 84-C-132-E


Jack C. Silver, Clerk  
U.S. DISTRICT COURT

JUDGMENT

This action came on for jury trial before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly tried and the jury having rendered its verdict,

IT IS ORDERED AND ADJUDGED that the Plaintiff Maggie Williams recover of the Defendant Chris Horner the sum of \$10,001.00 with interest thereon at the rate of 8.08 per cent as provided by law, and her costs of action.

DATED at Tulsa, Oklahoma this 31<sup>st</sup> day of October, 1985.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OCT 31 1985

BRADLEY ALAN SIKES,

Plaintiff,

vs.

MOSSBERG & SONS, INC.,

Defendant.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

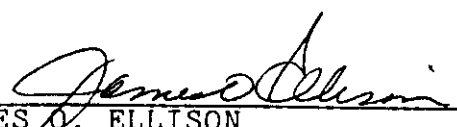
No. 83-C-1017-E

JUDGMENT

This action came on for jury trial before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly tried and the jury having rendered its verdict,

IT IS ORDERED AND ADJUDGED that the Plaintiff Bradley Alan Sikes take nothing from the Defendant Mossberg & Sons, Inc., that the action be dismissed on the merits, and that the Defendant Mossberg & Sons, Inc. recover of the Plaintiff Bradley Alan Sikes its costs of action.

DATED at Tulsa, Oklahoma this 31<sup>ST</sup> day of October, 1985.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 30 1985

JOHN CAREY OIL CO., INCORPORATED §  
an Illinois corporation, §

Plaintiff, §

v. §

AMES OIL & GAS CORPORATION, §  
a Texas corporation, §

Defendant. §

NO. 85-C-631-C

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

AGREED ORDER OF DISMISSAL

On this 30 day of Oct, 198<sup>5</sup>~~4~~, the Court considered the Agreed Motion to Dismiss filed by all parties to the captioned action, and the Court finds that the Motion should be granted because no party objects and because the case has been settled and compromised. It is accordingly ORDERED that:

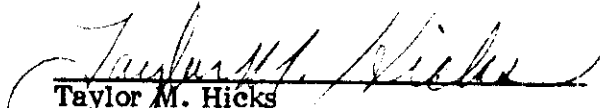
1. All claims, counterclaims and/or cross claims asserted by or against any party in the captioned action are dismissed with prejudice; and
2. Each party shall bear its own costs.


SIGNED this 30 day of Oct, 1985.

(Signed) H. Dale Cook


\_\_\_\_\_  
United States District Judge

APPROVED AS TO FORM AND SUBSTANCE  
AND ENTRY REQUESTED:

  
Taylor M. Hicks  
Andrews & Kurth  
4200 Texas Commerce Tower  
Houston, Texas 77002  
(713) 220-4064

  
Diane L. Smith  
Chapel, Wilkinson, Riggs, Abney,  
Keefer & Hinson  
502 West 6th Street  
Tulsa, Oklahoma 74119

Attorneys for Defendant  
AMES OIL & GAS CORPORATION

  
Frederic Dorwart  
Bruce M. Daniel  
Holliman, Langholz, Runnels & Dorwart  
700 Holarud Building  
Ten East Third Street  
Tulsa, Oklahoma 74103

Attorneys for Plaintiff  
JOHN CAREY OIL CO., INCORPORATED

FILED

OCT 30 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

SAUNDRA WALLACE,

Plaintiff,

vs.

HOTEL SYSTEMS INTERNATIONAL,  
a California corporation,  
and SAN JUAN DUPONT PLAZA  
CORPORATION, a Delaware corp-  
oration,

Defendant.

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) No. 85-C-787-C  
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O R D E R

NOW on this 30 day of October, 1985 this matter comes on before the Court upon the Joint Stipulation of Dismissal filed herein by the Plaintiff and the Defendant Hotel Systems International. The Court being fully advised in the premises finds that this action should be dismissed without prejudice as against the Defendant Hotel Systems International.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that this action be and it is hereby dismissed without prejudice as to the Defendant Hotel Systems International.

Signed H. Dale Cook

United States District Judge

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

TIM A. ICKES, a/k/a TIM ALLEN )

ICKES, KAREN L. ICKES, a/k/a )

KAREN ICKES, DALE LEE ICKES, )

WILMA ICKES, ODELL N. SHOOK, )

and JUANITA SHOOK, )

Defendants. )

CIVIL ACTION NO. 85-C-275-E

OCT 30 1985

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25<sup>th</sup>  
day of October, 1985. The Plaintiff appears by Layn  
R. Phillips, United States Attorney for the Northern District  
of Oklahoma, through Nancy Nesbitt Blevins, Assistant United  
States Attorney; the Defendants, Tim A. Ickes, a/k/a Tim  
Allen Ickes, Karen L. Ickes, a/k/a Karen Ickes, Dale Lee  
Ickes, Wilma Ickes, Odell N. Shook, and Juanita Shook, appear  
not, but make default.

The Court, being fully advised and having examined  
the file herein, finds that Defendants, Odell N. Shook and  
Juanita Shook, acknowledged receipt of Summons and Complaint  
on March 25, 1985.

The Court further finds that the Defendants, Tim A.  
Ickes, a/k/a Tim Allen Ickes, Karen L. Ickes, a/k/a Karen  
Ickes, Dale Lee Ickes, and Wilma Ickes, were served by  
publishing notice of this action in the Sapulpa Legal News,  
a newspaper of general circulation in Creek County, Oklahoma,

once a week for six consecutive weeks beginning August 8, 1985, and continuing to September 12, 1985, as more fully appears from the verified Proof of Publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. 2004(C)(3), since Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Tim A. Ickes, a/k/a Tim Allen Ickes, Karen L. Ickes, a/k/a Karen Ickes, Dale Lee Ickes, and Wilma Ickes, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Tim A. Ickes, a/k/a Tim Allen Ickes, Karen L. Ickes, a/k/a Karen Ickes, Dale Lee Ickes and Wilma Ickes. The Court conducted an inquiry into the sufficiency of the Service by Publication to comply with due process of law, and based upon the evidence presented, together with affidavit and documentary evidence, finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, have fully

exercised due diligence in ascertaining the true names and identities of the parties served by publication with respect to their present or last known places of residences and/or mailing addresses. The Court accordingly approves and affirms that the Service by Publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by Publication.

It appears that the Defendants, Tim A. Ickes, a/k/a Tim Allen Ickes, Karen L. Ickes, a/k/a Karen Ickes, Dale Lee Ickes, Wilma Ickes, Odell N. Shook, and Juanita Shook have failed to answer, and their default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following-described real property located in Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot One (1), in Block Two (2), in the City of Sapulpa, Creek County, State of Oklahoma, according to the recorded plat thereof.

THAT on March 19, 1982, Tim A. Ickes and Karen L. Ickes, executed and delivered to the United States of America, acting through the Administrator of Veteran Affairs, their mortgage note in the amount of \$23,000.00, payable in monthly installments, with interest thereon at the rate of fifteen and one-half (15-1/2) percent per annum.

That as security for the payment of the above-described note, Tim A. Ickes and Karen L. Ickes, executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a mortgage dated March 19, 1982, covering the above-described property. Said mortgage was recorded on March 29, 1982, in Book 115, Page 1975, in the records of Creek County, Oklahoma.

The Court further finds that Defendants Tim A. Ickes, a/k/a Tim Allen Ickes and Karen L. Ickes, a/k/a Karen Ickes, made default under the terms of the aforesaid mortgage note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof, the Defendants, Tim A. Ickes, a/k/a Tim Allen Ickes, and Karen L. Ickes, a/k/a Karen Ickes, are indebted to the Plaintiff in the sum of \$23,130.34 as of November 1, 1983, plus interest thereafter at the rate of 15-1/2 percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that any interest claimed by the Defendants, Odell N. Shook and Juanita Shook, in the property being foreclosed, is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Tim A. Ickes, a/k/a Tim Allen Ickes, and Karen L. Ickes,

a/k/a Karen Ickes, in the sum of \$23,130.34 as of November 1, 1983, plus interest thereafter at the rate of 15-1/2 percent per annum until judgment, plus interest thereafter at the current legal rate of 8.08 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Tim A. Ickes, a/k/a Tim Allen Ickes, and Karen L. Ickes, a/k/a Karen Ickes, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of the sale of the subject real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS  
United States Attorney

  
NANCY NESBITT BLEVINS

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

HAWK ENERGY CO.,

Plaintiff,

vs.

B & N PETROLEUM CO., INC.,  
et al.,

Defendants.

OCT 30 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

No. 85-C-667-E

JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 30<sup>th</sup> day of October, 1985.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 30 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PATRICIA FULK and )  
HAROLD F. FULK, )  
 )  
Defendants. )

CIVIL ACTION NO. 85-C-17-B

O R D E R

Upon the Motion of the United States of America,  
acting on behalf of the Veterans Administration, by Layn R.  
Phillips, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney, it is hereby ORDERED that this action shall be  
dismissed without prejudice pursuant to Rule 41(a)(2) of the  
Federal Rules of Civil Procedure.

Dated this 30<sup>th</sup> day of Oct., 1985.

S/ JAMES O. ELLISON

JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

LAYN R. PHILLIPS  
United States Attorney

PETER BERNHARDT  
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

Plaintiff,

vs.

LEONARD N. McWHIRT; RHONDA E.  
McWHIRT; COUNTY TREASURER,  
Tulsa County, Oklahoma; and  
BOARD OF COUNTY COMMISSIONERS,  
Tulsa County, Oklahoma,

Defendants.

**F I L E D**

OCT 30 1985

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 84-C-852-E

JOURNAL ENTRY OF JUDGMENT

THIS MATTER COMES on for consideration this 25<sup>th</sup> day  
of October, 1985, the Plaintiff appearing by Layn R.  
Phillips, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney, the Defendant, County Treasurer, Tulsa County,  
Oklahoma, and the Defendant, Board of County Commissioners, Tulsa  
County, Oklahoma, appearing by Susan K. Morgan, Assistant  
District Attorney, Tulsa County, Oklahoma, and the Defendants,  
Leonard M. McWhirt and Rhonda E. McWhirt, appearing not.

The Court having examined the file and being fully  
advised finds that the Defendant, County Treasurer, Tulsa County,  
Oklahoma, acknowledged receipt of summons and complaint on  
October 22, 1984; that the Defendant, Board of County  
Commissioners, Tulsa County, Oklahoma, acknowledged receipt of  
summons and complaint on October 24, 1984; and that the  
Defendants, County Treasurer, Tulsa County, Oklahoma, and Board  
of County Commissioners, Tulsa County, Oklahoma, have filed their  
answers on November 5, 1984.

The Court further finds that the Defendants, Leonard N. McWhirt and Rhonda E. McWhirt, were served by publication. The Court finds that Plaintiff has caused to be obtained an evidentiary affidavit from Standard Abstract & Title Company, a bonded abstractor located in the City of Tulsa, Tulsa County, State of Oklahoma, as to the last address of Leonard N. McWhirt and Rhonda E. McWhirt, which affidavit was filed on August 29, 1985; that the necessity and sufficiency of Plaintiff's due diligence search with respect to ascertaining the names and addresses of the Defendants, was then determined by the Court conducting an evidentiary hearing on the sufficiency of the service by publication to comply with due process of law. From the evidence, the Court finds that the Plaintiff, United States of America, and its attorney, Peter Bernhardt, Assistant United States Attorney, appearing for Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, have fully exercised due diligence in ascertaining the true names and identity of the parties served by publication, with their present or last known places of residence and/or mailing addresses.

The Court finds that the Plaintiff and its attorneys have fully complied with all applicable guidelines and due process of law in connection with obtaining service by publication. Therefore, the Court approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

The Court finds that this is one of the classes of cases in which service by publication may be had and that the Court's order for service by publication has been published in the Tulsa Daily Business Journal & Legal Record, a newspaper authorized by law to publish legal notices, printed in Tulsa County, Oklahoma, a newspaper of general circulation in Tulsa County, State of Oklahoma, for six (6) consecutive weeks commencing on June 14, 1985, and ending on July 19, 1985, by which said Defendants, Leonard M. McWhirt and Rhonda E. McWhirt, were notified to plead or answer the complaint filed herein within 20 days after publication, as more fully appears from the verified proof of such publication by the printer and publisher of said Tulsa Daily Business Journal & Legal Record duly filed herein on July 30, 1985.

The Court finds that the Defendants, Leonard N. McWhirt and Rhonda E. McWhirt, have failed to answer and their default has been entered by the Clerk of this Court on August 29, 1985.

The Court finds that this is a suit based upon a certain promissory note for foreclosure of a real estate mortgage securing said promissory note upon the following described real property situated in Tulsa, Oklahoma, within the Northern District of Oklahoma:

Lot Thirty-Three (33), Block Five (5),  
LAKEVIEW HEIGHTS Amended Addition to the  
City of Tulsa, State of Oklahoma, according  
to the recorded plat thereof.

The Court finds that on May 14, 1979, Leonard N. McWhirt and Rhonda E. McWhirt, executed and delivered to the

United States of America, acting through the Administrator of Veterans' Affairs, their promissory note in the amount of \$14,400.00, payable in monthly installments with interest thereon at the rate of nine and one-half (9 1/2) percent per annum.

The Court further finds that as security for the payment of the above described note, Leonard N. McWhirt and Rhonda E. McWhirt, executed and delivered to the United States of America, acting through the Administrator of Veterans' Affairs, a real estate mortgage dated May 14, 1979, covering the above described property. Said mortgage was recorded on June 5, 1979, in Book 4404, Page 479, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Leonard N. McWhirt and Rhonda E. McWhirt, made default under the terms of the aforesaid promissory note and mortgage by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the Defendants, Leonard N. McWhirt and Rhonda E. McWhirt are indebted to the Plaintiff in the principal sum of \$13,983.16, plus interest at the rate of nine and one-half (9 1/2) percent per annum from August 1, 1983 until judgment, plus interest thereafter at the legal rate until fully paid, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property, plus the costs of this action.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is subject matter of this action by virtue of ad valorem

taxes in the amount of \$ 0 . Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, does not claim any right, title or interest in the subject property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Leonard N. McWhirt and Rhonda E. McWhirt, for the principal sum of \$13,983.16, plus interest at the rate of nine and one-half (9 1/2) percent per annum from August 1, 1983, until judgment, plus interest thereafter at the current legal rate of 8.08 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a first lien on the subject property for ad valorem taxes due and owing in the amount of \$ 0 , plus applicable penalties and interest.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, does not have any right, title or interest in the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including costs of the sale of said real property;

Second:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$0\_\_\_\_\_, ad valorem taxes which are presently due and owing on said real property, plus applicable penalties and interest;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above described real property, under and by virtue of this judgment and decree, all of the Defendants

and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN B. PHILLIPS  
United States Attorney

PETER BERNHARDT  
Assistant United States Attorney

SUSAN K. MORGAN  
SUSAN K. MORGAN  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

COMMODITY CREDIT CORPORATION,

OCT 30 1985

Plaintiff,

JACK C. SILVER, CLERK

vs.

U.S. DISTRICT COURT  
No. 84-C-560-E

DELBERT S. BERRY, et al.,

Defendants.

JUDGMENT

This action came on before the Court, and the issues having been duly considered and a decision having been duly rendered,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff, Commodity Credit Corporation obtain of the Defendants, Delbert E. Berry and Anna Catherine Berry, immediate possession of the following described property: 11,571 cwt sorghum and 8,459 cwt sorghum and two 21495 Bushel Butler Grain Storage Bins and accessories as specifically described in financing statement filed February 9, 1982 in the office of the Craig County Clerk.


IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants, Delbert E. Berry and Anna Catherine Bery, take nothing on their counterclaim for storage fees for the period of time commencing April 16, 1983 to present, that the counterclaim as to storage fees from April 16, 1983 to present be dismissed on the merits, and the Plaintiff, Commodity Credit Corporation recover of the Defendants Berry its costs of action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Berry recover of the Plaintiff storage fees for the period of

time commencing December 1, 1982 through April 15, 1983 calculated at a rate of \$.4732 per cwt upon 20,030 cwt of grain.

IT IS FURTHER ORDERED that Plaintiff recover judgment of the Defendant First National Bank & Trust Co. of Vinita, Oklahoma and Defendant be declared to have no interest in the collateral which is the subject of this action and that Plaintiff recover its costs of action.

Dated at Tulsa, Oklahoma this 30<sup>th</sup> day of October, 1985.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

*Entered*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OCT 30 1985

DYCO PETROLEUM CORPORATION,

Plaintiff,

v.

COMMONWEALTH ROYALTIES, INC.,

Defendant.

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT


No. 84-C-632-B ✓

ADMINISTRATIVE CLOSING ORDER

The parties having requested this Court to stay this cause pending satisfaction of a settlement agreement resolving the controversies in this case, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 60 days of the last scheduled pay out under the settlement agreement, the parties have not reopened the proceeding for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED, this 30<sup>th</sup> day of Oct, 1985.

  
THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

*Entered*  
**FILED**

OCT 29 1985

BANK OF COMMERCE AND TRUST  
COMPANY OF TULSA, an Oklahoma  
banking corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

No. 83-C-551-C

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

This matter came on before the Court for nonjury trial on May 16, 1984. Plaintiff Bank of Commerce and Trust Company of Tulsa ("Bank") brought this two-count action, filed June 28, 1983, under the Internal Revenue Code, 26 U.S.C. §7426(a), for defendant's alleged wrongful levy upon two funds, set forth in two separate counts, in which Bank claims a prior and superior interest as lienholder of the accounts receivable of the taxpayer, Sun Insulation Company, Inc.

At the commencement of the trial, defendant confessed judgment as to Count 1 of the action, leaving only Count 2 to proceed to trial. As to Count 2, defendant asserts the applicable statute of limitation bars the action, while Bank contends defendant should be estopped to assert the statute of limitation as a bar to this action by reason of its misleading conduct and that the running of the statute should be tolled during the period the Bank was being unknowingly misled, and thus asserts this action was timely filed.

The parties have submitted proposed findings of fact and conclusions of law, and the matter is now ready for disposition. After considering the pleadings, testimony, exhibits admitted at trial, all of the briefs and arguments presented by counsel for both parties, and being fully advised in the premises, the Court enters the following findings of fact and conclusions of law pursuant to F.R.Cv.P. 52(a).

#### Findings of Fact

1. Plaintiff Bank is an Oklahoma banking corporation, officing solely in Tulsa, Oklahoma. Defendant is the United States of America.

2. The Court is vested with jurisdiction of this matter pursuant to 28 U.S.C. §1346(e) and 26 U.S.C. §7426(a).

3. Venue is proper in this federal judicial district pursuant to 28 U.S.C. §1391(e).

4. On November 6, 1980, Sun Insulation Company, Inc. ("Sun") borrowed from plaintiff, Bank of Commerce and Trust Company of Tulsa ("Bank") the sum of \$180,000.00, executing and delivering to Bank a security agreement for purpose of securing such loan and thereby granting Bank a security interest in certain collateral including all of the contract rights and accounts receivable then owned or thereafter acquired by Sun as well as all proceeds of such collateral. Sun also executed and delivered a financing statement, which Bank duly filed with the Oklahoma County Clerk on November 17, 1980, thus perfecting its security interest pursuant to the Uniform Commercial Code.

5. Sun failed to make its scheduled monthly installment payment to Bank in August, 1981, pursuant to the November, 1980, loan. The loan remains continuously in default and unpaid. As of December 7, 1981, the unpaid balance of the loan consisted of \$110,000.00 principal, plus accrued interest. Sun has made no further payments to Bank on the loan.

6. Sun entered into a contract with Kinning & Reil, Inc., a Nebraska general contractor, on May 14, 1980, pursuant to which Kinning & Reil was obligated to pay Sun \$68,700.00, and Sun was obligated to perform certain insulation work. Contract rights and receivables under the Kinning & Reil contract and proceeds thereof were among the collateral described in the financing statement and security agreement of November 6, 1980.

7. By mail, Kinning & Reil received a notice of levy, dated December 9, 1981, issued by the Internal Revenue Service, purporting to levy upon all sums of money and other obligations owed by Kinning & Reil to Sun.

8. In a meeting held December 22, 1981, between representatives of Bank and IRS revenue officer Gus Neundorf and group manager Don Tibbetts, each attending in his capacity as an agent of the Internal Revenue Service, the IRS officers represented to Bank that if Bank did not assert its perfected security interest against the \$31,500.00 receivable due Sun from Kinning & Reil under the Sun/Kinning & Reil contract, then the IRS would refrain from collection efforts against Bank with respect to employment taxes owed by Sun.

9. Bank, in reliance upon the representation of the IRS agents, did not assert its prior and superior perfected security interest lien against the \$31,500.00 contract receivable sum due Sun from Kinning & Reil.

10. On or about January 12, 1982, Kinning & Reil paid \$31,500.00 to the Tulsa office of the Internal Revenue Service, the total amount due Sun as of that date under the May 14, 1980, contract between Sun and Kinning & Reil. This sum was credited against the tax, penalty and/or interest owed by Sun to the United States.

11. The December 22, 1981, representations by the IRS agents concerning collection against Bank were made by the persons who, as of that date, would be the Internal Revenue Service personnel responsible for instituting or not instituting an assessment against Bank. Bank had no indication that the IRS would act contrary to the statements of its agents and take collection action against plaintiff until receipt of the August 30, 1982, notice of proposed assessment in early September, 1982. At the time of the meeting, because of the time required, it was impractical for Bank and the IRS to reduce their agreement to writing and to secure approval of the District Director of Internal Revenue. Both parties knew immediate action was required to keep Sun on the Kinning & Reil job to realize funds to pay off debts owed to both parties. Under such circumstances, Bank believed the IRS representations were true and binding.

12. Bank first relied to its detriment on the agents' representations of December 22, 1981, by writing a letter to Kinning & Reil, permitting the release of the \$31,500.00, secured by Bank's prior perfected lien, to the IRS. Second, Bank caused \$6,400.00 in cashier's checks to be issued to the IRS for withheld employment taxes of Sun arising after December 22, 1981. Third, Bank advanced additional funds to Sun for the purpose of enabling Sun to complete the Kinning & Reil project; and fourth, Bank refrained from filing a wrongful levy action against the IRS.

13. Despite the December 22, 1981, representations, the IRS subsequently began collection efforts against Bank for Sun's employment taxes. Defendant has filed a counterclaim, still pending, against Bank in Case No. 83-C-795-B in the U.S. District Court for the Northern District of Oklahoma, asserting Bank's liability for unpaid employment taxes of Sun.

14. Bank first learned of the misleading nature of the agents' representations when it received, during the week of September 6, 1982, the notice of proposed assessment of a penalty in the amount of Sun's unpaid employment taxes, dated August 30, 1982, from the Internal Revenue Service, and at all times prior thereto, Bank believed the representations to be true.

15. Bank's letter dated November 5, 1982, and addressed to the District Director, Internal Revenue Service, requested the return of levied property, under Section 6532(c) of the Internal Revenue Code, with respect to the \$31,500.00 received by the IRS from Kinning & Reil on or about January 12, 1982. The Internal

Revenue Service did not mail Bank a notice of disallowance of this request. Bank filed this action on June 28, 1983.

Conclusions of Law

1. Jurisdiction properly lies within this Court pursuant to 28 U.S.C. §1346(e) and 26 U.S.C. §7426(a).

2. Venue is proper in this federal judicial district pursuant to 28 U.S.C. §1391(e).

3. Title 26 U.S.C. §7426(a) provides:

(1) Wrongful levy.--If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary or his delegate.

4. Title 26 U.S.C. §7426(b)(2) provides, in pertinent part:

(2) Recovery of property.--If the court determines that such property has been wrongfully levied upon, the court may--

(A) . . .

(B) grant a judgment for the amount of money levied upon . . . .

5. Title 26 U.S.C. §6532(c), setting forth the limitation of action period, provides, in pertinent part:

(c) Suits by persons other than taxpayers.--

(1) General rule.--Except as provided by paragraph (2), no suit or proceeding under section 7426

shall be begun after the expiration of 9 months from the date of the levy or agreement giving rise to such action.

(2) Period when claim is filed.--If a request is made for the return of property described in section 6343(b), the 9-month period prescribed in paragraph (1) shall be extended for a period of 12 months from the date of filing of such request or for a period of 6 months from the date of mailing by registered or certified mail by the Secretary or his delegate to the person making such request of a notice of disallowance of the part of the request to which the action relates, whichever is shorter.

6. Traditionally, the general state of the law was such that there could be no estoppel against the United States because of the actions of its agents. Recent cases, however, embody the doctrines of quasi-estoppel and abuse of discretion as support for equitable estoppel of the government in cases where the alternative is gross inequity. See generally Note, Quasi-Estoppel and Abuse of Discretion as Applied Against the United States in Federal Tax Controversies, 19 Tax L. Rev. 487 (1964). There is no doubt the government may be estopped under certain circumstances.

7. A federal statute that sets forth a specific limitation period may be tolled or suspended where a defendant's conduct induced the plaintiff to delay commencement of the action. American Pipe and Construction Co. v. Utah, 414 U.S. 538 (1974). This includes claims involving federal taxation. "It is well settled that the doctrine of equitable estoppel, in proper circumstances, and with appropriate caution, may be invoked against the United States in cases involving internal revenue

taxation." Simmons v. U.S., 308 F.2d 938 (5th Cir. 1962). And, as to a Section 7426 wrongful levy action specifically, the government was estopped from asserting the statute of limitations in Belton v. Commissioner, 562 F.Supp. 30 (D.C. 1982).

8. Quasi-estopped, based on equitable considerations, involves certain relevant factors such as:

- a) a misrepresentation by an agent of the United States acting within the apparent scope of his duties;
- b) the absence of contrary knowledge by the taxpayer in circumstances where he may reasonably act in reliance;
- c) actual reliance;
- d) detriment; and
- e) a factual context in which the absence of equitable relief would be unconscionable.

Tonkonogy v. U.S., 417 F.Supp. 78 (S.D.N.Y. 1976).

9. The December 22, 1981, meeting yielded an agreement by Mr. Neundorf, Internal Revenue Service revenue officer and by his supervisor, Mr. Tibbetts, Internal Revenue Service group manager, to the effect that if the Bank would refrain from asserting its perfected security interest against the \$31,500.00 receivable due Sun from Kinning & Reil under the Sun/Kinning & Reil contract, then the IRS would refrain from collection efforts against Bank with respect to employment taxes owed by Sun.

Although Bank performed its obligation under the agreement, the IRS did not, and instead began collection efforts by mailing Bank a proposed assessment of a penalty equal to

certain employment taxes not paid by Sun. Thus, the December 22 representations by the IRS were in fact misrepresentations.

10. The Bank reasonably relied upon the representations of the defendant under the circumstances and had no contrary knowledge. The parties agreed to forego a written agreement in the interest of time and their mutual desire to keep the Kinning & Reil contract productive as further set forth in Finding No. 11. The agents making the agreement were also responsible for instituting assessments or for refraining therefrom.

11. Bank actually relied on the defendant's representations to its detriment as fully set forth in this Court's Finding No. 12.

12. The absence of equitable relief would be unconscionable in this case. Bank stands to lose its entire benefit (freedom from collection action) of the bargain reached December 22, 1981, while defendant would profit to the full extent of that bargain and be unjustly enriched. Bank at all times acted in good faith. Defendant, on the other hand, maintained its misrepresentation for nine months, and, as Bank's right to contest the levy was expiring, proposed to assess Bank 100% of Sun's employment tax liability.

13. The Court rejects the argument of the defendant that the agents had no authority to make any such agreement and therefore cannot be held to any representation made. While these IRS agents may not have had statutory authority to make the agreement with Bank, they nevertheless, as to Bank which relied to its detriment on misrepresentations of the agents, were acting

within the apparent scope of there authority. The Court finds the reasoning of the court in Brandt v. Hickel, 427 F.2d 53 (9th Cir. 1970) to be applicable herein by analogy. There, the U.S. Bureau of Land management land manager was estopped from disavowing misstatements detrimentally relied upon by plaintiffs regarding lease priority procedures. The Brandt court stated that "some forms of erroneous advice are so closely connected to the basic fairness of the administrative decision making process that the government may be estopped from disavowing the misstatement." See also Tonkonogy v. U.S., supra at 80 (estoppel of IRS by reason of reasonably relied upon misrepresentations).

14. The Court, therefore, finds, by reason of the foregoing, the defendant was estopped, by reason of its false representation, from asserting the statute of limitation, which was thereby tolled from the date of the agreement, December 22, 1981, until the date Bank became aware of the falsity of the representations, by the letter of notice of proposed assessment dated August 30, 1982.

Bank, receiving the assessment letter a few days later, then had nine months (less the 12 days between the December 9, 1981 notice of levy until the December 22, 1981, date of the meeting and agreement) to file this action pursuant to 26 U.S.C. §6532(c)(1). However, on November 5, 1982, within that 9 month period, Bank requested by letter, the return of its \$31,500.00.<sup>1</sup>

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<sup>1</sup>Plaintiff's exhibit #2.

Because the government did not respond to Bank's demand, the letter is considered a proper and adequate demand pursuant to 26 C.F.R. §301.6343-1(b)(3), and as such, operates under §6532(c)(2) to extend the statute of limitation for a period of twelve (12) months from the date of the demand, November 5, 1982. Within this 12 month extended period, on June 28, 1983, Bank commenced this action. Thus, this action was timely commenced.


15. The Court notes defendant's citation of Dieckmann v. U.S., 550 F.2d 622 (10th Cir. 1977), for the proposition that the doctrine of sovereign immunity precludes, as an absolute bar, equitable estoppel in reference to the statutory limitation period. The Court finds Dieckmann does not control this action. In Dieckmann, plaintiffs sued fourteen months after the date of levy to recover funds asserted to be theirs which were used to satisfy the tax liability of another and were dismissed from the action pursuant to a motion to dismiss for subject matter jurisdiction. Dieckmann held that the government has no duty to give notice of tax levy on funds to possible third-party claimants or to search for them and thus a lack of knowledge by the parties claiming entitlement to funds would not toll the 9 month statute of limitation. The case involved no allegations of misrepresentations by the government, lulling the claimants into inaction during the limitation period, as the instant case, nor does Dieckmann contain any other exception to the statutory limitation period as set forth in American Pipe & Construction. Co. v. Utah, 414 U.S. 538 (1974), recognized as embodying exceptions and indeed cited by the Dieckmann court.

16. During trial of this matter, counsel for defendant admitted the "[B]ank had a superior claim to the \$31,500.00 to the Internal Revenue Service; with hindsight that appears clear."<sup>2</sup> The Court agrees that the Bank had a superior claim and so finds. In addition, the agreed pre-trial order of April 17, 1984, signed by the parties and the Court, contains the stipulation of the parties that "if the Court reaches this issue, [who has the prior lien] then whichever party is found, as [a] matter of law, to have acquired the prior and superior interest, is entitled to judgment in this Count II."

Accordingly, the Court finds Bank should be and hereby is granted judgment on Count II against defendant in the amount of \$31,500.00 plus interest at the legal rate, pursuant to 26 U.S.C. §7426(g)(1), from the date the government received the money wrongfully levied upon, January 12, 1982, to the date of payment of the judgment.

The Court also finds judgment should be and hereby is granted on Count 1 on behalf of Bank and against defendant in the amount of \$2,840.00, plus interest at the legal rate, pursuant to 26 U.S.C. §7426(g)(1), from May 25, 1982, to the date of payment of the judgment.

IT IS SO ORDERED this 29<sup>th</sup> day of October, 1985.

  
H. DALE COOK  
Chief Judge, U. S. District Court

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<sup>2</sup>Transcript of 5-16-84 at 17.

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 29 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

BANK OF COMMERCE AND TRUST  
COMPANY OF TULSA, an Oklahoma  
banking corporation,

Plaintiff,

vs.

No. 83-C-551

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

This matter came on for nonjury trial before the Court on May 16, 1984. The issues having been duly tried, the contentions of parties and the law having been duly considered, the Court hereby enters judgment on behalf of plaintiff and against defendant as to Count 1 in the amount of \$2,840.00, plus interest at the legal rate, pursuant to 26 U.S.C. §7426(g)(1), from May 25, 1982, to the date of payment of this judgment.

The Court hereby enters judgment on behalf of plaintiff and against the defendant as to Count 2, in the amount of \$31,500.00 plus interest at the legal rate, pursuant to 26 U.S.C. §7426(g)(1), from January 12, 1982, to the date of payment of this judgment.

IT IS SO ORDERED this 29<sup>th</sup> day of october, 1985.

  
H. DALE COOK

Chief Judge, U. S. District Court

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

OCT 29 1985

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARL WALKER,

Defendant.

CIVIL ACTION NO. 85-C-768-E

AGREED JUDGMENT

This matter comes on for consideration this 28th day of October, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Carl Walker, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Carl Walker, acknowledged receipt of Summons and Complaint on August 27, 1985. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that judgment may accordingly be entered against him in the amount of \$1,151.40 (less the amount of \$400.00 which has been paid), plus interest at the rate of 15.05 percent per annum and administrative costs of \$.61 per month from March 30, 1984, and \$.68 per month from January 1, 1985, until judgment, plus interest thereafter at the legal rate from the date of judgment until paid, plus the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Carl Walker, in the amount of \$1,151.40 (less the amount of \$400.00 which has been paid), plus interest at the rate of 15.05 percent per annum and administrative costs of \$.61 per month from March 30, 1984, and \$.68 per month from January 1, 1984, until judgment, plus interest thereafter at the current legal rate of 8.08% percent from the date of judgment until paid, plus the costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS  
United States Attorney

*for Mary Melvitt Blum*  
PETER BERNHARDT  
Assistant U.S. Attorney

*Carl Walker*  
CARL WALKER

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:

GERALD LEE WILLIAMS,

Debtor.

GERALD LEE WILLIAMS,

Plaintiff,

vs.

KARIS DENISE THOMPSON-WILLIAMS,

Defendant.

No. 80-01478

Adversary No. 82-0282

District Court No. 85-C-834-B

FILED

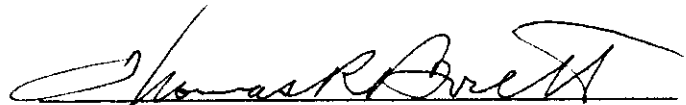
OCT 29 1985

JUDY C. SILVER, Clerk  
U.S. DISTRICT COURT

ORDER

Upon notification of debtor-appellant of the abandonment of  
this appeal, this matter is hereby dismissed.

IT IS SO ORDERED this 28<sup>th</sup> day of October, 1985.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 29 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

PATRICK K. BROWN and ASSUNTA )  
BROWN, husband and wife; )  
EDWARD LEO FREEMAN, a single )  
person; PAUL B. NAYLOR as )  
Trustee for Edward Leo )  
Freeman, Jr.; EDWARD LEO )  
FREEMAN, JR.; STATE OF )  
OKLAHOMA, ex rel. Oklahoma )  
Tax Commission; COUNTY )  
TREASURER, Tulsa County, )  
Oklahoma; BOARD OF COUNTY )  
COMMISSIONERS, Tulsa County, )  
Oklahoma; BARBARA CYRUS and )  
LEON JOHNSON, as co-guardians )  
for Edward Leo Freeman, Jr., )

Defendants. )

CIVIL ACTION NO. 84-C-867-C

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 29 day  
of October, 1985. The Plaintiff appears by Layn R.  
Phillips, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendant, Assunta Brown, appearing by her attorney  
of record, Robert M. Butler, the Defendant, Paul B. Naylor,  
appearing on his own behalf, the Defendant, Leon Johnson,  
appearing by his counsel of record Paul B. Naylor, the  
Defendants, County Treasurer, Tulsa County, Oklahoma, and Board  
of County Commissioners, Tulsa County, Oklahoma, appearing by  
Susan K. Morgan, Assistant District Attorney, Tulsa County,

Oklahoma, the Defendant, State of Oklahoma, ex rel. Oklahoma Tax Commission, appearing not, having previously filed its Disclaimer on December 12, 1984, disclaiming any lien upon or interest in the real property involved in this action, and the Defendants, Patrick K. Brown, Edward Leo Freeman, deceased, Edward Leo Freeman, Jr., and Barbara Cyrus, appear not.

The Court being fully advised and having examined the file herein finds that the Defendant, Patrick K. Brown, was served with Summons, Complaint and First Amended Complaint on April 10, 1985; that the Defendant, Assunta Brown, now Cox, entered her appearance through her attorney of record, Robert M. Butler, on May 2, 1985; that the Defendant, Paul B. Naylor, as trustee for Edward Leo Freeman, Jr., acknowledged receipt of Summons and Complaint on October 30, 1984; that the Defendant, Edward Leo Freeman, Jr., was served with Summons, Complaint and First Amended Complaint on April 2, 1985; that the Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 29, 1984; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 30, 1984; and that the Defendant, Barbara Cyrus, as co-guardian for Edward Leo Freeman, Jr., acknowledged receipt of Summons, Complaint and First Amended Complaint on March 5, 1985.

It appears that the Defendant, Assunta Brown, now Cox, filed her Answer on May 20, 1985; that the Defendant, Paul B. Naylor, as trustee for Edward Leo Freeman, Jr., filed his Answer on November 15, 1984, and his Amended Answer on February 7, 1985;

that the Defendant, State of Oklahoma, ex rel. Oklahoma Tax Commission, filed its Disclaimer on December 12, 1984, disclaiming any lien upon or interest in the real property which is the subject of this foreclosure action; that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed its Answer on November 13, 1984; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on November 13, 1984; that the Defendant, Leo Johnson, as co-guardian for Edward Leo Freeman, Jr., filed his Answer on April 2, 1985; and that the Defendants, Patrick K. Brown, Edward Leo Freeman, Jr., and Barbara Cyrus, as co-guardian for Edward Leo Freeman, Jr., have failed to answer and their default has been entered by the Clerk of this Court on May 16, 1985.

The Court further finds that this is a suit based upon a certain promissory note for foreclosure of a real estate mortgage securing said promissory note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Five (5), in Block Eight (8), in Sharon Heights, Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that this is a suit brought for the further purpose of judicially determining the death of Edward Leo Freeman, and of judicially terminating the joint tenancy of Edward Leo Freeman, deceased, and Paul B. Naylor, as trustee for Edward Leo Freeman, Jr.

The Court further finds that on February 7, 1968, Patrick K. Brown and Assunta Brown, now Cox, executed and

delivered to the United States of America, acting through the Administrator of Veterans' Affairs, their promissory note in the amount of \$10,000.00, payable in monthly installments with interest thereon at the rate of 6 percent per annum.

The Court further finds that as security for the payment of the above described note, Patrick K. Brown and Assunta Brown, now Cox, executed and delivered to the United States of America, acting through the Administrator of Veterans' Affairs, a real estate mortgage dated February 7, 1968, and recorded on February 9, 1968, in Book 3837, Page 864, in the records of Tulsa County, Oklahoma, covering above described real property.

The Court further finds that Edward Leo Freeman died on December 13, 1977, in Tulsa County, Oklahoma, as is evidenced by Certificate of Death, State of Oklahoma, Department of Health, local registrar's file No. 773824, state file No. 25413, while seized and possessed together with Paul B. Naylor, as trustee for Edward Leo Freeman, Jr., of the subject property. At the time of death of Edward Leo Freeman, he and Paul B. Naylor, as trustee for Edward Leo Freeman, Jr., were the record owners of the property involved in this action, by virtue of that certain Warranty Deed dated October 17, 1977, from Edward Leo Freeman to Edward Leo Freeman and Paul B. Naylor, as trustee for Edward Leo Freeman, Jr., as joint tenants and not as tenants in common, on the death of one survivor, the heirs and assigns of the survivor, to take the entire fee simple title, which Warranty Deed was filed of record on October 18, 1977, in Book 4283, Page 1538, in the records of Tulsa County, Oklahoma. Upon the death of Edward

Leo Freeman the subject property vested in his surviving joint tenant, Paul B. Naylor, as trustee for Edward Leo Freeman, Jr., by operation of law.

The Court further finds that Plaintiff is entitled to a judicial determination of the death of Edward Leo Freeman and to a judicial termination of the joint tenancy of Edward Leo Freeman and Paul B. Naylor, as trustee for Edward Leo Freeman, Jr., in the real property involved herein.

The Court further finds that the Defendants, Patrick K. Brown and Assunta Brown, now Cox, made default under the terms of the aforesaid promissory note and mortgage by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the Defendants, Patrick K. Brown and Assunta Brown, now Cox, are indebted to the Plaintiff in the principal sum of \$6,740.22, plus interest at the rate of 6 percent per annum from February 1, 1984, until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$0. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Paul B. Naylor, as trustee for Edward Leo Freeman, Jr., Board of County Commissioners, Tulsa County, Oklahoma, and Leon Johnson, as

co-guardian for Edward Leo Freeman, Jr., do not claim and do not have any right, title, or interest in the real property involved in this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$0, plus applicable penalties and the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Paul B. Naylor, as trustee for Edward Leo Freeman, Jr., Board of County Commissioners, Tulsa County, Oklahoma, and Leon Johnson, as co-guardian for Edward Leo Freeman, Jr., have no right, title, or interest in the real property which is the subject of this foreclosure action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the death of Edward Leo Freeman be and the same hereby is judicially determined to have occurred on December 13, 1977, in the City of Tulsa, Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the joint tenancy of Edward Leo Freeman and Paul B. Naylor, as trustee for Edward Leo Freeman, Jr., in the above described real property be and the same hereby is judicially terminated as of the date of death of Edward Leo Freeman on December 13, 1977.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Patrick K. Brown and Assunta Brown, now Cox, in the principal amount of \$6,740.22, plus interest at the rate of 6 percent per annum from February 1, 1984, until judgment, plus interest thereafter at the

current legal rate of 8.08 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including costs of the sale of said real property;

Second:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$0, ad valorem taxes which are presently due and owing on said real property; and

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above described real property, under and by virtue of this judgment and decree, the Defendants and all persons claiming under them since the filing of this Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

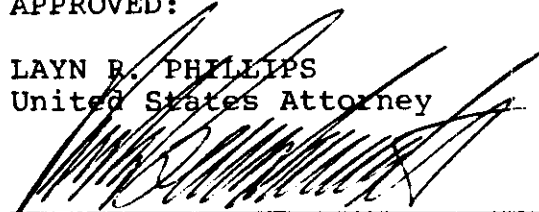
(Signed) H. Dale Cook

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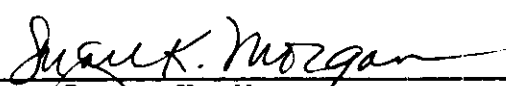
UNITED STATES DISTRICT JUDGE

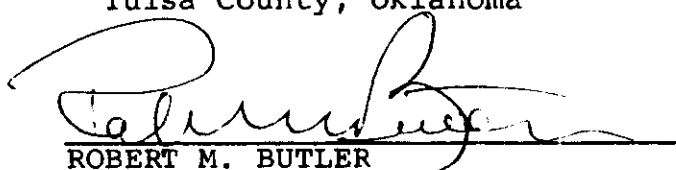
APPROVED:

LAYN B. PHILLIPS  
United States Attorney

  
PETER BERNHARDT  
Assistant United States Attorney

DAVID MOSS  
District Attorney

  
By: Susan K. Morgan  
Assistant District Attorney  
406 Tulsa County Courthouse  
Tulsa, Oklahoma 74103  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

  
ROBERT M. BUTLER  
1710 South Boston Avenue  
Tulsa, Oklahoma 74119  
Attorney for Defendant,  
Assunta Brown, now Cox

---

PAUL B. NAYLOR

Naylor and Williams, Inc.  
1701 South Boston Avenue  
Tulsa, Oklahoma 74119  
Attorneys for Defendant,  
Leon Johnson, as co-guardian for  
Edward Leo Freeman, Jr.

---

PAUL B. NAYLOR

Naylor and Williams, Inc.  
1701 South Boston Avenue  
Tulsa, Oklahoma 74119  
Attorneys for Defendant,  
Paul B. Naylor, as trustee for  
Edward Leo Freeman, Jr.

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

OCT 29 1985

FARMERS INSURANCE COMPANY, INC., )  
TRUCK INSURANCE EXCHANGE )  
TRUCK UNDERWRITERS ASSOCIATION; )  
DEL TORRANCE, and )  
BETTY TORRANCE, )

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

Plaintiffs, )

vs. )

No. 84-C-743-C

ROBERT LEE KOSNOSKI, )  
EUROCARS, INC., )  
GERALD A. DECHOW, and )  
"JOHN DOE" being an unknown )  
person or persons )


Defendants. )

JUDGMENT

This matter came on before the Court for determination of the motion of the defendant, Gerald Dechow, for summary judgment. There being no controverted material facts, the issues having been duly considered and a decision having been duly rendered in accordance with the Order granted summary judgment herein,

IT IS SO ORDERED AND ADJUDGED that the defendant, Gerald Dechow, is entitled to judgment against the plaintiffs, Farmers Insurance Company, Inc., Truck Insurance Exchange Truck Underwriters Assoc; Del Torrance and Betty Torrance, pursuant to Rule 56 F.R.Cv.P.

IT IS SO ORDERED this 28th day of October, 1985.

  
H. DALE COOK  
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

LEONARD STROTHER,

plaintiff,

v.

STEVE DOWNING, HARRY W. STEGE,  
and CITY OF TULSA,

OCT 29 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

84-C-641-C

FINDINGS AND RECOMMENDATIONS OF MAGISTRATE

Plaintiff brings this civil rights complaint pursuant to 42 U.S.C. §1983. He claims he was beaten by Tulsa City Police Officer Steve Downing during the course of his arrest on November 10, 1983. According to the Plaintiff's own account of the incident, he was attempting to allude Officer Downing, first in a vehicle and then on foot, as he had become "nervous and paranoid," because he knew that he "had some warrants out on me for public drunk." Officer Downing admitted that he pushed Plaintiff down on the trunk of another officer's car but asserts that such application of force was reasonable under the circumstances in order to insure his own and the other officer's safety in light of Plaintiff's previous desperate conduct in attempting to elude the officers.

Defendants have moved to dismiss and alternatively for summary judgment pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff has filed a reply brief wherein he "concedes that he has no action against Defendant Stege and the City of Tulsa," and therefore "has no objection to the dismissal of his complaint as it involves Defendant Stege and City of Tulsa."

Magistrate Robert S. Rizley conducted a telephone conference call hearing on April 17, 1985 wherein he granted Plaintiff leave to file an affidavit in opposition to Defendant's Motion for Summary Judgment within 30 days. Plaintiff has filed no affidavit or any other pleading whatsoever. Furthermore, the Magistrate was advised by the Oklahoma Department of Corrections that Plaintiff was released on April 25, 1985. Further inquiries by the Magistrate revealed that the Department of Corrections had no forwarding address for Plaintiff, nor did the particular institution from which he was discharged.

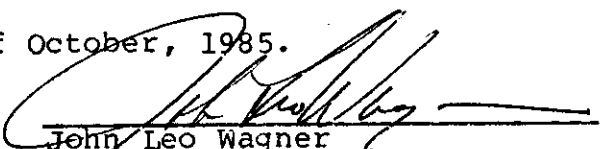
Insofar as Plaintiff has had more than sufficient opportunity to provide counter affidavits or other evidentiary material controverting the factual matters presented by way of Defendants' Affidavits, and has entirely failed to do so, the Magistrate must consider the uncontroverted factual allegations set forth in the Defendants' Affidavits as true.

The Magistrate finds that there is no genuine issue of material fact, and that this case may be properly disposed of on summary judgment. The Magistrate further finds that the affidavits presented by Defendants establish beyond a reasonable doubt that Officer Downing's conduct did not violate Plaintiff's clearly established statutory or constitutional rights; that the application of force was objectively reasonable; that such application was not grossly disproportionate to the need for action under the circumstances, and that defendant Downing is entitled to a judgment as a matter of law pursuant to Rule 56(c) of the Federal Rules of Civil Procedure.

The Magistrate further finds that the uncontroverted record of medical complaints and treatment in the Tulsa County Jail establishes beyond a reasonable doubt that Plaintiff was not injured in any manner requiring medical treatment by the actions of Officer Downing. It appears that the only complaints he made, and the only ailments for which he was treated were pre-existing stomach and hemorrhoid conditions.

Based upon the above set forth findings, the Magistrate recommends that this case be dismissed as to Defendants Harry W. Stege and the City of Tulsa, based upon Plaintiff's concession that he has no valid cause of action against them; and that the Motion for Summary Judgment of the remaining Defendant, Steve Downing, be granted.

Dated this 29<sup>th</sup> day of October, 1985.

  
John Leo Wagner  
United States Magistrate

O R D E R

The Court hereby adopts the findings and conclusions of the Magistrate, and it is hereby Ordered that this case be dismissed as to Harry W. Stege and the City of Tulsa; and that the Motion for Summary Judgment of Defendant Steve Downing be granted.

Dated this 13 day of November, 1985.

(Signed) H. Dale Cook

H. DALE COOK  
CHIEF JUDGE

FILED  
OCT 13 1985  
C. SILVER, CLERK  
DISTRICT COURT

entered

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OCT 28 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

JACKIE LEE GREEN, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Respondent. )

No. 85-CR-63-B ✓  
No. 85-C-906-BT

O R D E R

This matter comes before the Court on petitioner Jackie Lee Green's motion to vacate sentence (Amended Petition for Writ of Habeas Corpus), filed pursuant to 28 U.S.C. §2255. In accordance with Rule 8(a) of the Rules Governing Proceedings in the United States District Courts Under Section 2255 of Title 28, United States Code, petitioner's motion is denied.

On May 20, 1985, petitioner pleaded guilty to attempting to escape from the custody of the Supervising United States Probation Officer for the Northern District of Oklahoma, in violation of Title 18 U.S.C. §751(a). On July 2, 1985, the Court sentenced petitioner to the custody of the Attorney General for three (3) years, plus a special assessment of \$50.00. Petitioner premises his motion on the argument that his arrest on April 3, 1985 was invalid since the parole violator's warrant was not issued until April 4, 1985, that he could not be guilty of

escaping from custody as charged, and that the judgment and sentence of this court is therefore void or voidable.

The case history prepared by the Supervising United States Probation Officer for the Northern District of Oklahoma, Rod Baker, quoted by petitioner in prior proceedings herein, (Motion to Withdraw Plea of Guilty and for Dismissal of Lawsuit, p. 2-3) indicates the following:

On April 8, 1983, petitioner was sentenced by this Court on a two-count counterfeiting indictment. Petitioner was sentenced to two years on Count I and placed on three years probation on Count II. On April 15, 1983, the Honorable James O. Ellison sentenced petitioner to fifteen months to run consecutively to the two-year sentence imposed on April 8, 1983. The fifteen-month sentence was imposed for Failure to Appear.

On April 13, 1984, petitioner was released to the parole supervision of the Tulsa Office of the U. S. Probation and Parole Service.

On March 20, 1985, petitioner was stopped in Tarrant County, Texas for speeding in a 1980 Corvette. A passenger in the car was suspected of smoking marihuana. The Tarrant County Deputy Sheriff obtained the driver's licenses of both petitioner and the passenger and subsequently discovered what he believed to be cocaine and marihuana. Defendant then broke away from the deputy and sped away in the Corvette. The Corvette had been previously stolen in Tulsa, Oklahoma.

Documents filed with the Court, attached to the Government's response to the petition, indicate that a felony warrant was issued on March 21, 1985 for petitioner's arrest on a charge of possession of a controlled substance (cocaine). On March 20, 1985 a misdemeanor probable cause warrant was issued by a Texas magistrate on a charge of evading arrest, later upgraded to a felony charge. The affidavit of Rod Baker, Exhibit A to the Government's response, indicates that Officer Baker knew petitioner was wanted on a felony charge in Texas and that a federal warrant for parole violation was forthcoming.

Officer Baker observed petitioner in the Interurban Restaurant in Tulsa, Oklahoma on April 3, 1985. Officer Baker stopped petitioner as he was about to leave the restaurant, told him he was under arrest, and identified himself. Petitioner was told to have a seat on a bench in the waiting area of the restaurant. Motion to Withdraw Plea of Guilty and for Dismissal of Lawsuit, p.2.

Petitioner refused to take a seat, advising he was about to faint. He then knocked Officer Baker out of the way and bolted for the front door, where a struggle ensued and Baker succeeded in restraining petitioner until a local police unit arrived. Id., pp. 2-3.

Officer Baker had the authority to arrest petitioner on the basis of the outstanding warrants issued out of the State of Texas. The existence of such warrants at the time of the arrest and Officer Baker's knowledge thereof is undisputed. Officer

Baker's status as a federal parole officer does not preclude him from arresting persons against whom he knows felony warrants are outstanding. The initial arrest, based upon the outstanding Texas felony warrant, was valid.

An individual charged with escape from the custody of a federal arresting officer can be convicted of escape regardless of the propriety, irregularity or illegality of confinement. A lawful arrest is not a prerequisite to the crime of escape from federal custody. United States v. Allen, 432 F.2d 939 (10th Cir. 1970); United States v. Franklin, 313 F.Supp. 43 (S.D.Ind. 1970), aff'd 440 F.2d 1210 (7th Cir. 1971). Assuming arguendo that the initial arrest was not lawful, petitioner could still be properly charged with escape. A parolee's recourse is to challenge the arrest through legal channels rather than by escape.

Petitioner's allegations of improper representation arise from the same operative facts outlined above and do not raise a separate issue.

For the reasons set forth above, petitioner's \$2255 motion is dismissed. Rule 4(b), Rules Governing Proceedings in the United States District Courts Under Section 2255.

IT IS SO ORDERED this 28<sup>th</sup> day of October, 1985.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

JOE MOORE, A Minor, by and  
through his Natural Parent and  
Next Best Friend, CARL L.  
MOORE,

Plaintiff,

-vs-

BRYAN K. KELLY,

Defendant,

and

SOUTHERN INSURANCE COMPANY,

Garnishee.

FILED

OCT 28 1985

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 85-C-922-B

NOTICE OF DISMISSAL

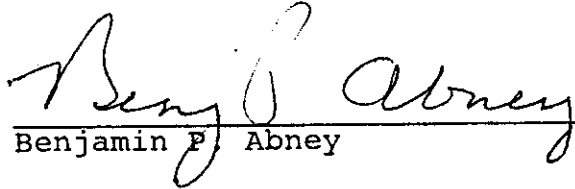
COMES NOW the Plaintiff, Joe More, a minor, by and through his natural parent and next best friend, Carl L. Moore, by and through his attorneys, Chapel, Wilkinson, Riggs, Abney & Henson, Tulsa, Oklahoma, and hereby gives notice pursuant to Rule 41 that it does hereby dismiss its action against the Garnishee, Southern Insurance Company, without prejudice, and releases the Garnishee from its bond filed herein.

Respectfully submitted,

*Benjamin P. Abney*  
Benjamin P. Abney  
CHAPEL, WILKINSON, RIGGS, ABNEY &  
HENSON  
502 West Sixth Street  
Tulsa, Oklahoma 74119  
(918) 587-3161

CERTIFICATE OF MAILING

I hereby certify that on the 29<sup>TH</sup> day of October, 1985, I mailed a true and correct copy of the foregoing Notice of Dismissal to John R. Caslavka, Richards, Paul & Wood, 9 East 4th Street, Suite 400, Tulsa, Oklahoma 74103, with proper postage thereon prepaid.

  
Benjamin P. Abney

*Entered*

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID E. LUCIER,

FILED

OCT 28 1985

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 85-C-217-B

DISMISSAL

Now c

*James*

On October, 1985, it appears

that the Defendant

case has not been located

within the Northern District of Oklahoma, and therefore attempts  
to serve David E. Lucier have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against  
Defendant, David E. Lucier, be and is dismissed without  
prejudice.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BYRON S. WELLS,

Defendant.

OCT 28 1985

U.S. District Court  
Northern District of Oklahoma

CIVIL ACTION NO. 85-C-279-B

ORDER OF DISMISSAL

Now on this 28<sup>th</sup> day of October, 1985, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Byron S. Wells have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Byron S. Wells, be and is dismissed without prejudice.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 28 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

BOBBY EUGENE LOWE,  
Individual,

Plaintiff,

vs.

No. 84-C-678-C

DEXTER REED BLOODWORTH,  
an Individual,

Defendant.

ORDER

Upon the joint application and stipulation of the Plaintiff and Defendant, and each of them, to partially dismiss the Complaint herein and for good cause shown, the Court finds that:

1. The Plaintiff, Bobby E. Lowe's Complaint filed herein should be partially dismissed by stipulation pursuant to the provisions of Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure.

2. The said Partial Dismissal is with prejudice and does operate as an adjudication upon the merits of the causes of action contained in said Complaint as related to the Plaintiff, Bobby E. Lowe and Dexter Reed Bloodworth and that each party is responsible for their own attorney's fees and costs incurred herein.

3. That this Partial Dismissal with Prejudice shall not act to bar any claim against Dexter R. Bloodworth asserted by Bobby Eugene Lowe under-insured motorist coverage by and through the insurance company's subrogation rights from Bobby Eugene Lowe.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above-styled and captioned cause should be and the same

is partially dismissed with prejudice in that the claims and causes of actions stated on behalf of Bobby Eugene Lowe in said Complaint are hereby partially dismissed with prejudice with the exception that any future cause of action against Dexter Reed Bloodworth asserted by and through the subrogation interests of Bobby Eugene Lowe's under-insured motorist coverage carrier shall not be barred.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties herein are responsible for the payment of their own attorney's fees and costs incurred.

(Signed) H. Dale Cook

---

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 28 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

MARY JANE LOWE and BOBBY  
EUGENE LOWE, Individuals,

Plaintiffs,

vs.

DEXTER REED BLOODWORTH,  
an Individual,

Defendant.

No. 84-C-678-C

ORDER

Upon the joint application and stipulation of the Plaintiffs and Defendant, and each of them, to partially dismiss the Complaint herein and for good cause shown, the Court finds that:

1. The Plaintiff, the Estate of Mary Jane Lowe's Complaint filed herein should be partially dismissed by stipulation pursuant to the provisions of Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure.

2. The said Partial Dismissal is with prejudice and does operate as an adjudication upon the merits of the causes of action contained in said Complaint as related to the Plaintiff, the Estate of Mary Jane Lowe and as related to the Defendant, Dexter Reed Bloodworth and that each party is responsible for their own attorney's fees and cost incurred herein.

3. That this Partial Dismissal with Prejudice shall not act to bar any claim against Dexter R. Bloodworth asserted by Mary Jane Lowe's underinsured motorist coverage by and through the insurance company's subrogation rights for Mary Jane Lowe.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above-styled and captioned cause should be and the same

is partially dismissed with prejudice in that the claims and causes of actions stated on behalf of the Estate of Mary Jane Lowe in said Complaint are hereby partially dismissed with prejudice with the exception that any future cause of action against Dexter Reed Bloodworth asserted by and through th subrogation interests of Mary Jane Lowe's underinsured motorist coverage carrier shall not be barred.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties herein are responsible for the payment of their own attorney's fees and costs incurred.

(Signed) H. Dale Cook

---

UNITED STATES DISTRICT JUDGE

*Entered*

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

JOE MOORE, A Minor, by and  
through his Natural Parent and  
Next Best Friend, CARL L.  
MOORE,

Plaintiff,

-vs-

BRYAN K. KELLY,

Defendant,

and

SOUTHERN INSURANCE COMPANY,

Garnishee.

00128 1985

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 85-C-922-B

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, Joe More, a minor, by and through his natural parent and next best friend, Carl L. Moore, by and through his attorneys, Chapel, Wilkinson, Riggs, Abney & Henson, Tulsa, Oklahoma, and hereby gives notice pursuant to Rule 41 that it does hereby dismiss its action against the Garnishee, Southern Insurance Company, without prejudice, and releases the Garnishee from its bond filed herein.

Respectfully submitted,

---

Benjamin P. Abney  
CHAPEL, WILKINSON, RIGGS, ABNEY &  
HENSON  
502 West Sixth Street  
Tulsa, Oklahoma 74119  
(918) 587-3161

CERTIFICATE OF MAILING

I hereby certify that on the \_\_\_\_\_ day of October, 1985, I mailed a true and correct copy of the foregoing Notice of Dismissal to John R. Caslavka, Richards, Paul & Wood, 9 East 4th Street, Suite 400, Tulsa, Oklahoma 74103, with proper postage thereon prepaid.

\_\_\_\_\_  
Benjamin P. Abney

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

COOPER TIRE & RUBBER CO.,

Plaintiff,

vs.

KENNY ROGERS d/b/a KENNY ROGERS  
TIRE CO. and CYNTHIA ROGERS,

Defendants.

Case No. 85-C-677-BT ✓

FILED

OCT 28 1985

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Defendants having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other prupose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 28 day of OCTOBER, 19 85.

  
UNITED STATES DISTRICT JUDGE  
THOMAS R. BRETT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 29 1985

MERLIE D. BETZLER and  
JOHN WESLEY BETZLER,

Plaintiffs,

v.

THE CITY OF SAPULPA, OKLAHOMA,  
et al.,

Defendants.

)  
)  
)  
)  
)  
)  
)  
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)  
)

Jack G. Silver, Clerk  
U. S. DISTRICT COURT

No. 83-C-706-B

J U D G M E N T

In keeping with the Findings of Fact and Conclusions entered this date, IT IS HEREBY ADJUDGED AND DECREED the plaintiffs, Merlie D. Betzler and John Wesley Betzler, are hereby granted judgment against The City of Sapulpa, Oklahoma, in the amount of Nineteen Thousand Nine Hundred and No/100 Dollars (\$19,900.00), and for reimbursement of expenses in the amount of One Thousand One Hundred Thirty and 95/100 Dollars (\$1,130.95), and postjudgment interest thereon at the rate of 8.08 percent per annum. IT IS FURTHER ORDERED AND ADJUDGED the applications for attorneys' fees of the defendants Lee, Monger, Hughes, Gore, Zumwalt and Allen; Blagg Wrecking Company, Inc.; and American National Bank and Trust Company of Sapulpa, Oklahoma are hereby denied and the plaintiffs are granted judgment thereon.

DATED this 28<sup>th</sup> day of October, 1985.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

OCT 25 1985

THOMAS J. HUMPHREYS,  
Plaintiff,  
vs.

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

GARY D. MILLS, MILLS OIL & GAS,  
INC., GAR-MAC, INC., McKENNEY  
ENERGY, LTD., J.M. GRAVES, ALLEN  
D. WEST, VERNON McKENZIE, MARK  
L. NANCE, ROBERT FILLMORE, A.E.  
BOONE, WENDELL S. McCracken,  
LUTHER CURTIS, GLENN GLITSCH,  
ED PALLUCONI and UNION BANK AND  
TRUST COMPANY OF OKLAHOMA CITY,  
Defendants.

Case No. 85-C-107-C

*Notice of*

**CROSS-CLAIMANTS' DISMISSAL**

COME NOW the Defendant/Cross-Claimants, J.M. Graves and Allen D. West, and pursuant to Rule 41(a)(1) and (c), hereby dismiss their Cross-Claim as against Ed Palluconi only, without prejudice.

Dated this 25th day of October, 1985.

ORIGINAL SIGNED BY  
James R. Gotwals

James R. Gotwals, OBA #3499  
James R. Gotwals & Associates  
Attorneys for the Defendants  
J.M. Graves and Allen D. West  
525 South Main, Suite 201  
Tulsa, OK 74103  
(918) 599-7088

**CERTIFICATE OF MAILING**

~~September~~ <sup>October</sup> The undersigned hereby certifies that on the 25th day of ~~September~~ <sup>October</sup>, 1985, a true and correct copy of the above and foregoing MOTION FOR DEFAULT JUDGMENT was mailed to:

Thomas M. Ladner, Esq.  
Hall, Estill, Hardwick, Gable  
Collingsworth, and Nelson  
4100 Bank of Oklahoma Tower  
Tulsa, OK 74172  
Attorney for the Plaintiff

Charles L. McBride, Esq.  
P.O. Box 1422  
Stillwater, OK 74076  
Attorney for the Defendant,  
McKenney Energy, Ltd.

Gary D. Mills  
2421 South West 14th  
Oklahoma City, OK 73108

Gary D. Mills  
Oklahoma Service Agent for  
Mills Oil & Gas, Inc.  
2421 South West 14th  
Oklahoma City, OK 73108

Secretary of State  
State of Oklahoma  
Oklahoma Service Agent for  
Gar-Mac, Inc.  
101 State Capitol Building  
Oklahoma City, OK 73105

L. Michael Guard, Esq.  
Pate & Payne  
401 North Hudson  
P.O. Box 1907  
Oklahoma City, OK 73101-1907  
Attorney for the Defendant  
Union Bank and Trust Company  
of Oklahoma City

with correct and proper postage affixed thereon.

ORIGINAL SIGNED BY  
James R. Gotwals

---

James R. Gotwals

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

OCT 25 1985

FARMERS INSURANCE COMPANY, INC., )  
TRUCK INSURANCE EXCHANGE )  
TRUCK UNDERWRITERS ASSOCIATION; )  
DEL TORRANCE, and )  
BETTY TORRANCE, )

Plaintiffs, )

vs. )

No. 84-C-743-C

ROBERT LEE KOSNOSKI, )  
EUROCARS, INC., )  
GERALD A. DECHOW, and )  
"JOHN DOE" being an unknown )  
person or persons )

Defendants. )

O R D E R

Now before the Court for its consideration is the motion for summary judgment of the defendant Gerald A. Dechow filed on August 8, 1985. Defendant asserts plaintiffs' action is barred by principles of res judicata, collateral estoppel and estoppel by judgment.

The uncontroverted facts are as follows:

1. The action herein involves a claim by the Plaintiffs that they or their insureds were the owners of a certain Mercedes Benz automobile that was allegedly converted by the defendants on the 16th day of July, 1984, within Tulsa, Oklahoma;
2. That the instant action was commenced by Plaintiff Del and Betty Torrance on the 28th day of August, 1984;
3. That by Order of this Court dated July 9, 1985, the insurers of Plaintiffs Del & Betty Torrance were joined as Parties-Plaintiff;

4. That on the 23rd day of July, 1984, Eurocars, Inc., commenced a certain action against Del Torrance and unknown Defendants being all others claiming an interest in said Mercedes Benz in the Circuit Court of Raleigh County, West Virginia, alleging its ownership of the vehicle in question;
5. That on or about the 27th day of August, 1984, Defendants Del and Betty Torrance in the West Virginia action removed the cause to the United States District Court for the Southern District of West Virginia, Beckely Division, as civil action number 84-5269;
6. That on or about the 1st day of September, 1984, Defendants Del and Betty Torrance filed their Motion to dismiss the West Virginia action alleging that the West Virginia Court was devoid of jurisdiction to determine ownership of the Mercedes Benz automobile in question;
7. That on or about the 3rd day of December, 1984, Eurocars, Inc., filed its Motion for Summary Judgment on the issue of the ownership of the vehicle in question in the West Virginia action;
8. That on or about the 27th day of December, 1984, Defendant Gerald A. Dechow filed his Motion to Dismiss this action pending in the Northern District of Oklahoma in and for the reason that this Court is an improper venue to try the ownership of the vehicle in question;
9. That on 2nd day of February, 1985, this Court overruled this Defendant's Motion to Dismiss;
10. That on the 10th day of June, 1985, the Honorable Elizabeth A. Hallanan, United States District Judge for the Southern District of West Virginia, Beckely Division, overruled the Motion to Dismiss of Defendants Del and Betty Torrance filed on or about the 27th day of August, 1984;
11. That during June, 1984, Defendant Del and Betty Torrance filed their Answer and Counter-Claim against Plaintiff Eurocars, Inc., in the United States District for the Southern District of West Virginia alleging as their Counter-Claim the conversion of the vehicle in question and alleging their ownership of the same;
12. That on the 2nd day of August, 1985, the United States District Court for the Southern District of West Virginia, Beckely Division, entered its Order

sustaining the Motion for Summary Judgment of Eurocars, Inc., finding that it was the owner of the Mercedes Benz automobile in question.

In its Order dated August 2, 1985, the West Virginia federal court determined the following uncontroverted facts (parties are referenced by their status in West Virginia, i.e. Eurocars, plaintiff and Samuel Abassi and Del Torrance, defendants.):

1. Plaintiff has its principal place of business in Raleigh County, West Virginia. Defendant Torrance is a resident of Tulsa, Oklahoma.

2. In January of 1984, Plaintiff purchased a number of automobiles in West Germany, one of said automobiles being the Mercedes Benz that is the subject of the instant action. At that time, Plaintiff received a Bill of Sales and Certificate of origin for the automobile.

3. Plaintiff then imported the car to this country and permitted David Williams to display it in Fort Smith, Arkansas. Plaintiff contends that it never granted to Williams authority to sell or convey the automobile without Plaintiff's prior approval. This contention is supported by Williams' deposition testimony. Since Plaintiff and Williams were the only parties privy to the agreement, the Court must conclude that indeed was the arrangement between Plaintiff and Williams.

4. Plaintiff at all times retained and still possesses the Certificate of Origin and the Certificate of Title to the automobile at issue.

5. Defendant Abassi was employed by Williams in Fort Smith, Arkansas. Abassi took the automobile, without permission of Plaintiff or Williams, to Tulsa, Oklahoma, where he showed and sold the automobile to Defendant Torrance. This transaction occurred in May of 1984.

6. Defendant Torrance is a licensed used car dealer in Oklahoma and had never seen and did not know Defendant Abassi. Defendant Torrance paid \$49,000.00 to Defendant Abassi for the automobile. Despite the fact that Torrance did not know Abassi, and that the price paid for the automobile was \$5,000 below the market value of the automobile, Defendant Torrance made no

inquiries into Abassi's authority to sell the vehicle, or why there was such a price differential.

7. After learning of the unauthorized conveyance of the automobile by Abassi, Plaintiff regained possession of the automobile. Plaintiff at no time received any portion of the purchase price paid for the vehicle by the Defendant Torrance to Defendant Abassi.

The West Virginia federal court, in applying Oklahoma law, 12A O.S. §2-403(2), held that Del Torrance did not observe reasonable commercial standards in that Torrance, as an experienced car dealer, purchased a luxury automobile for \$5,000.00 less than its retail price from a seller in which he had not previously dealt, without verifying the seller had authority to pass title. The West Virginia court held that title was vested in Eurocars, Inc.

The issue to be determined is whether the doctrine of res judicata operates to bar further proceedings in this Court on plaintiff's amended complaint which alleges conversion of the automobile in question. The Court finds that a final order has been entered in the federal court in West Virginia, dated August 2, 1985, which established clear legal title in the subject Mercedes vested in Eurocars, Inc.


The elements necessary to invoke the doctrine of res judicata are identity of issues and a final judgment on the merits rendered by a court of competent jurisdiction. See 50 C.J.S. Judgments §598 (1947).

The Court has reviewed the Order entered by the federal court in West Virginia and the pleadings filed in the instant case. From this review, it is apparent to the Court that the parties are the same or in privity, the action is the same, and

the federal court in West Virginia is a court of competent jurisdiction. Furthermore, the West Virginia court reviewed the merits of the action and this Court finds no deprivation of any disputed factual issues.

Therefore premises considered upon review of the pleadings, files and Order of the federal court in West Virginia, this Court finds that the motion of defendant Gerald A. Dechow for summary judgment over and against the plaintiffs' Farmers Insurance Company, Inc., Truck Insurance Exchange Truck Underwriters Assoc., Del Torrance and Betty Torrance, should be granted as plaintiffs' action is barred by principles of res judicata, collateral estoppel and estoppel by judgment.

IT IS SO ORDERED this 25<sup>th</sup> day of October, 1985.

  
H. DALE COOK  
Chief Judge, U. S. District Court

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 25 1985

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JENNIFER D. KOTTOM,

Defendant.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-209-E

ORDER OF DISMISSAL

Now on this 24<sup>th</sup> day of October, 1985, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Jennifer D. Kottom have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Jennifer D. Kottom, be and is dismissed without prejudice.

WILLIAM O. ALTON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

THE McMICHAEL COMPANY,  
Plaintiff,

vs

CHARTRAND EQUIPMENT COMPANY,  
Defendant.

Case no: 84-C-954-C

ADMINISTRATIVE CLOSING ORDER

The parties having reached a settlement, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 90 days or until January 21, 1986, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 24 day of October, 1985.

(Signed) H. Dale Cook

JUDGE H. DALE COOK, Chief Judge  
for the Northern District of OK

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAMES R. DARRELL, a/k/a ADAM W. )  
STERLING, )

OCT 23 1985

Petitioner, )

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

v. )

No. 85-C-775-C

UNITED STATES OF AMERICA, )

Respondent. )

FINDINGS AND RECOMMENDATIONS OF MAGISTRATE

This habeas corpus action was filed by the petitioner while he was detained in the Tulsa County Jail pursuant to 18 U.S.C. §3142. Mr. Darrell was subsequently released on bond. A telephone conference call was conducted by the Magistrate on October 17, 1985, wherein Mr. Darrell agreed that the Petition for Writ of Habeas Corpus, was moot, and should be dismissed.

Consequently, the Magistrate finds that this matter is moot, and should be dismissed.

Dated this 18th day of October, 1985.

  
John Leo Wagner  
United States Magistrate

O R D E R

The Court hereby adopts the Findings and Conclusions of the Magistrate, and it is hereby Ordered that this case be dismissed.

Dated this 23rd day of October, 1985.

  
H. DALE COOK  
CHIEF JUDGE

*Entered*

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ANN M. and FRANK D. STREIGHTOFF,  
Texas Individuals,

Plaintiffs,

No. 85-C-383-B

EDDIE McDONUGH, an Oklahoma  
Individual, AL JOHNSON, an  
Oklahoma Individual, and E-MAC  
OIL AND GAS, INC., an Oklahoma  
Corporation,

Defendants

FILED  
OCT 23 1985  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

The Defendant, E-Mac Oil and Gas, Inc., having failed to plead or otherwise defend in this action and its default having been entered,

Now, upon application of the Plaintiffs and upon Affidavit that Defendant is indebted to Plaintiffs in the sum of \$12,500.00 plus interest, that Defendant has been defaulted for failure to appear and that Defendant is not an infant or incompetent person, and is not in the military service of the United States, it is hereby,

ORDERED, ADJUDGED AND DECREED that Plaintiffs recover of Defendant the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00), plus Two Hundred Nineteen Dollars and Fifty Cents (\$219.50) as the amount incurred as costs in this litigation; with interest on the above stated amounts at the rate of

7.91 per cent per annum from the date of judgment on this matter until the date the above compensatory award is satisfied; and all further relief in law or equity, as this Court may deem proper and just.

S/ THOMAS R. BRETT

Judge Thomas R. Brett

Dated Oct 22, 1985

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

OCT 22 1985

AI HONDA,

Plaintiff,

**VS.**

RANDALL R. BROWN,

Defendant.

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

No. 85-C-394 C

### ORDER OF DISMISSAL

Upon Application of the Plaintiff, Ai Honda,

IT IS ORDERED that the above-captioned case be dismissed with prejudice to its refiling for the reason that the parties have fully settled their claims as set forth in the Stipulation of Settlement and Dismissal of Action filed herein.

s/H. DALE COOK

**JUDGE OF THE DISTRICT COURT**

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
JUL 22 1985

DENNIS A. SKINNER,  
Plaintiff,

vs.

No. 82-C-1118-C

TOTAL PETROLEUM, INC.,  
a Michigan corporation,  
BILL NELSON AND RICHARD CRAIG,  
Defendants.


JACK C. SILVER, CLERK  
U. S. DISTRICT COURT

J U D G M E N T

Pursuant to the Findings of Fact and Conclusions of Law filed simultaneously herein, judgment is hereby entered in favor of plaintiff Dennis A. Skinner and against defendant Total Petroleum, Inc. in the amount of \$40,251.43.

Absent an affidavit from plaintiff's attorney listing the factors enumerated in Waters v. Wisconsin Steel Works of Int'l. Harvester, 502 F.2d 1309, 1322 (7th Cir. 1974), the amount of the attorney's fee cannot be determined. Plaintiff is hereby given twenty (20) days within which to submit proper documentation to the Court. Defendant is given 10 days thereafter in which to respond.

IT IS SO ORDERED this 22<sup>nd</sup> day of July, 1985.

  
H. DALE COOK  
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

OCT 22 1985

LEROY TUCK, Administrator, )  
of the estate of Johnny L. )  
Tuck, Deceased, LEROY TUCK, an )  
individual, and DOROTHY TUCK an )  
individual, )

Plaintiffs, )

vs. )

UNITED SERVICES AUTOMOBILE )  
ASSOCIATION, )

Defendant. )

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

No. 83-C-175-C

AMENDED JUDGMENT

This action came on for determination by the Court on the post-trial motions of the defendant, United Services Automobile Association, and the matter having been duly considered and an Order have been duly rendered, the Court hereby amends the Journal Entry of Judgment filed on July 27, 1984, to reflect the following,


IT IS ORDERED AND ADJUDGED as to Count I that the plaintiff, Leroy Tuck in his capacity as Administrator of the Estate of Johnny L. Tuck, plaintiff Leroy Tuck in his individual capacity and plaintiff Dorothy Tuck recover of the defendant United Services Automobile Association, the sum of One Hundred Thousand and no/100 Dollars (\$100,000.00) with interest thereon at the rate of 12.17% as provided by law, and their costs of the action.

IT IS ORDERED AND ADJUDGED as to Count II that the plaintiff Leroy Tuck, in his individual capacity, and plaintiff Dorothy

Tuck recover of the defendant United Services Automobile Association, the sum of Seventy Five Thousand and no/100 Dollars (\$75,000.00) actual damages and Five Hundred Thousand and no/100 Dollars (\$500,000.00) punitive damages with interest thereon at the rate of 12.17% as provided by law, and their costs of the action.

IT IS ORDERED AND ADJUDGED as to Count III that the plaintiff Leroy Tuck, in his individual capacity, and plaintiff Dorothy Tuck recover from the defendant United Services Automobile Association actual damages in the amount of Fifty Thousand and no/100 Dollars (\$50,000.00) and punitive damages in the amount of Fifty Thousand and no/100 Dollars (\$50,000.00) with interest thereon at the rate of 12.17% as provided by law, and the costs of the action.

IT IS SO ORDERED this 22<sup>nd</sup> day of October, 1985.

  
H. DALE COOK  
Chief Judge, U. S. District Court

8/19/85  
DWE/cj

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 22 1985

SHIRLEY SHARP,

Plaintiff,

v.

TEXAS PACIFIC CORPORATION,  
a Texas Corporation, d/b/a  
HIDEAWAY ARCADE APARTMENTS;  
and CREDIT COLLECTIONS, INC.,

Defendants.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 85-C-289-E

ORDER OF DISMISSAL

The above matter coming on to be heard this 21<sup>st</sup> day of August, 1985, upon the written stipulation of the parties for a dismissal of said action with prejudice and the Court, having examined said stipulation, finds that the parties have entered into a compromised settlement covering all claims involved in the action, and have requested the Court to dismiss said action with prejudice to further action, and the Court being fully advised in the premises, finds that said action should be dismissed pursuant to said stipulation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff's cause of action filed herein against the defendants be and the same is hereby dismissed with prejudice to any future action.

SA JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES WILLIAM BOLT,

Defendant.

No. 82-CR-93-BT

85-C-254-BT

**FILED**

OCT 21 1985

O R D E R

Jack C. Silver, Clerk  
U. S. DISTRICT COURT


This matter comes before the Court on defendant's Motion to Vacate the revocation of his bond after he was convicted of aiding and abetting mail fraud, conspiring to commit mail fraud and making false statements to a federally insured bank. In support of his motion, defendant made serious allegations concerning tampering with evidence in the case against him and stated that the government drugged him and subjected him to drug experimentation while he was in a medical facility in Springfield, Mo. Because of the serious nature of these accusations, the Court ordered defendant to submit a sworn affidavit stating that to the best of his knowledge these accusations are true. Defendant and his counsel were reminded of the serious penalties for submitting a false affidavit under 18 U.S.C. §1623.

On October 3, 1985, defendant, through his counsel, John Thomas Hall, requested an enlargement of time in which to submit this affidavit. The Court granted defendant an extension until

October 11, 1985, to complete this affidavit and submit it to the Court along with any documentary evidence in support of defendant's allegations. Defendant was alerted that failure to submit this affidavit would result in dismissal of his Motion to Vacate.

Defendant having not submitted the affidavit as ordered by this Court, the Motion to Vacate is hereby dismissed with prejudice.

IT IS SO ORDERED, this 20<sup>th</sup> day of October, 1985.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE.

*Entered*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES WILLIAM BOLT,

Defendant.

No. 82-CR-93-BT ✓

85-C-254-BT

**FILED**

**OCT 21 1985**

O R D E R

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

This matter comes before the Court on defendant's Motion to Vacate the revocation of his bond after he was convicted of aiding and abetting mail fraud, conspiring to commit mail fraud and making false statements to a federally insured bank. In support of his motion, defendant made serious allegations concerning tampering with evidence in the case against him and stated that the government drugged him and subjected him to drug experimentation while he was in a medical facility in Springfield, Mo. Because of the serious nature of these accusations, the Court ordered defendant to submit a sworn affidavit stating that to the best of his knowledge these accusations are true. Defendant and his counsel were reminded of the serious penalties for submitting a false affidavit under 18 U.S.C. §1623.

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October 11, 1985, to complete this affidavit and submit it to the Court along with any documentary evidence in support of defendant's allegations. Defendant was alerted that failure to submit this affidavit would result in dismissal of his Motion to Vacate.

Defendant having not submitted the affidavit as ordered by this Court, the Motion to Vacate is hereby dismissed with prejudice.

IT IS SO ORDERED, this 20<sup>th</sup> day of October, 1985.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE.

*Entered*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES WILLIAM BOLT,

Defendant.

No. 82-CR-93-BT ~~1~~

85-C-254-BT ✓

FILED

OCT 21 1985 *js*

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R


This matter comes before the Court on defendant's Motion to Vacate the revocation of his bond after he was convicted of aiding and abetting mail fraud, conspiring to commit mail fraud and making false statements to a federally insured bank. In support of his motion, defendant made serious allegations concerning tampering with evidence in the case against him and stated that the government drugged him and subjected him to drug experimentation while he was in a medical facility in Springfield, Mo. Because of the serious nature of these accusations, the Court ordered defendant to submit a sworn affidavit stating that to the best of his knowledge these accusations are true. Defendant and his counsel were reminded of the serious penalties for submitting a false affidavit under 18 U.S.C. §1623.

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October 11, 1985, to complete this affidavit and submit it to the Court along with any documentary evidence in support of defendant's allegations. Defendant was alerted that failure to submit this affidavit would result in dismissal of his Motion to Vacate.

Defendant having not submitted the affidavit as ordered by this Court, the Motion to Vacate is hereby dismissed with prejudice.

IT IS SO ORDERED, this 20<sup>th</sup> day of October, 1985.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OBO, et al.,

Plaintiffs,

v.

CITY OF TULSA, et al.,

Defendants.

No. 83-C-246-B

**FILED**

**OCT 21 1985**

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

This matter comes before the Court on defendant City of Tulsa's Motion to Dismiss the individual claims of Plaintiffs Dwight Cole, Charles Rose, Isetta Corbbrey, Victor Driver and Ben Williams ("Five Plaintiffs"), pursuant to F.R.Civ.P. Rule 37. For the reasons stated hereafter, defendant's motion is granted.

On February 11, 1985, the Municipal Defendants herein served notice upon counsel for Plaintiffs of scheduled dpositions regarding Plaintiffs' Motion for Class Certification. These notices requested the attendance of the Five Plaintiffs and 10 other plaintiffs at depositions on February 21, 1985. Three of the Five Plaintiffs who were given notice for deposition (Cole, Corbbrey and Driver) failed to appear. Thereafter, Municipal Defendants made three more efforts to take the depositions of these plaintiffs. At the time, the defendants were facing a March 29, 1985, response date to file an Answer in Opposition to Plaintiffs' Motion for Class Certification. This response date was subsequently moved to April 12, 1985, because of the difficulty the Municipal Defendants had had in taking Plaintiffs' depositions.

On March 13, 1985, Municipal Defendants filed a Motion to Compel Attendance at Deposition. On March 18, 1985, Magistrate Robert Rizley held a hearing on this motion and ruled that the remaining individually named plaintiffs would be produced for depositions during the first week of April 1985. The Magistrate ordered that if any of these individually named plaintiffs failed to appear for the taking of their depositions relating to the issues of class certification, he would recommend dismissal of their individual complaints.

On March 28, 1985, Municipal Defendants sent Notices of Taking Depositions re: Plaintiffs' Motion for Class Certification to the respective attorneys of record. By agreement of counsel, the depositions were to be taken on April 4, 1985, and April 5, 1985.

Of the remaining fifteen individually named plaintiffs ordered to appear for depositions on April 4 and April 5, 1985, five plaintiffs failed to appear: Dwight Cole, Charles Rose, Isetta Corbbrey, Victor Driver and Ben C. Williams. Municipal Defendants now seek dismissal of these five plaintiffs' individual complaints, pursuant to F.R.Civ.P. Rule 37(b)(2)(C), for failure to obey a court order to permit discovery.

Rule 37 states in pertinent part that if a party disobeys a court order to provide or permit discovery, the Court may issue such orders in regard to the failure as are just, including:


(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party....

While dismissal of a party's claim with prejudice is a harsh remedy for failure to comply with a court order regarding discovery,

it is clearly an available remedy within the Court's discretionary power under Rule 37. Robinson v. Audi Nsu Auto Union Aktiengesellschaft, 739 F.2d 1481 (10th Cir. 1984); Brennan v. Sine, 495 F.2d 875, 877 (10th Cir. 1974). Indeed, sanctions for failure to comply with discovery orders must be applied diligently in order to penalize those whose conduct is deemed to warrant such sanctions and to deter those who might be tempted to pursue such conduct if there were no such deterrent. Roadway Exp., Inc., v. Piper, 447 U.S. 752, 763-764 (1979). National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639 (1976)(per curiam), reh. denied, 429 U.S. 874 (1976). Where a party willfully fails to comply with the rules of discovery, dismissal with prejudice is proper. Adams v. Jones Construction Co., 703 F.2d 483, 484 n.3 (10th Cir. 1983). Robinson v. Transamerica Ins., 368 F.2d 37 (10th Cir. 1966).

In the instant case, despite repeated efforts to schedule and take their depositions and an order of the Magistrate to appear for depositions, five plaintiffs failed to appear for depositions. Such action reflects willful failure to comply with the rules of discovery and a court order regarding discovery. For this reason, the Court finds dismissal with prejudice of the individual complaints of plaintiffs Dwight Cole, Charles Rose, Isetta Corbbrey, Victor Driver and Ben C. Williams an appropriate remedy. Therefore, Municipal Defendants' Motion to Dismiss the individual complaints of these plaintiffs is granted.

IT IS SO ORDERED, this 17<sup>th</sup> day of October, 1985.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARVIN L. MORSE and TERRY ALAN JENKINS,

Plaintiffs,

vs.

DEAN B. KNIGHT, an individual;  
FRED P. LEIDING, an individual;  
TOWN AND COUNTRY BANK, a bank-  
institution; and JACK G.  
STEELE, an individual,

Defendants.

No. 85-C-740-B

**FILED**

OCT 21 1985

ORDER

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

The Court has for its consideration the Joint Motion to Dismiss the Complaint as to plaintiff Jenkins filed by the defendants Dean B. Knight, Fred P. Leiding, Sr. and Town & Country Bank. The motion was presented and considered during the course of the Court's Status/Scheduling conference conducted on October 10, 1985. The plaintiffs, Marvin L. Morse and Terry Alan Jenkins, were represented by their counsel of record James C. Garland, the defendant Dean B. Knight was represented by his counsel of record James W. Tilly, the defendant, Fred. P. Leiding, Sr., was represented by his counsel of record Joel L. Wohlgemuth, and defendant, Town & Country Bank, was represented by its counsel of record Robert S. Rizley.

The Court has reviewed the defendants' Motion and supporting brief together with the plaintiffs' response. Plaintiff Jenkins concedes that the claims encompassed by his Complaint were not

originally listed on his bankruptcy schedules, and that subsequently this action was described on an amendment to Schedule B-2 of the bankruptcy papers. Accordingly, the joint motion of defendants to dismiss Jenkins' Complaint should be granted. It is therefore

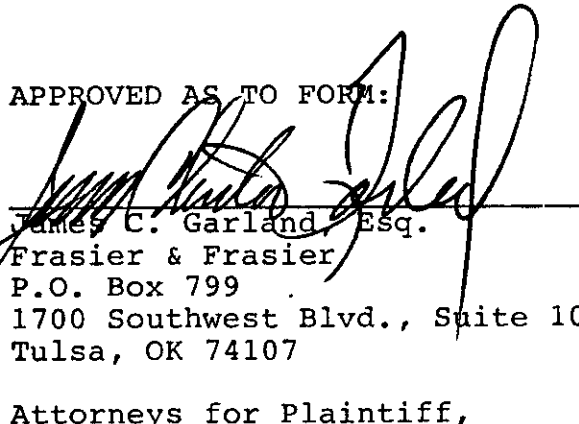
ORDERED that the Complaint of the plaintiff Terry Alan Jenkins be and the same is hereby dismissed without prejudice.

Dated this 10th day of October, 1985.



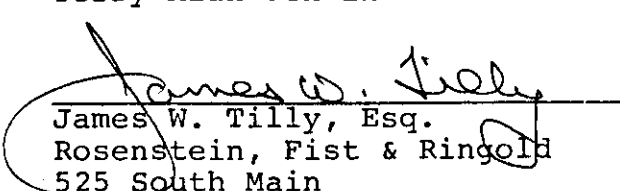
THOMAS R. BRETT,  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



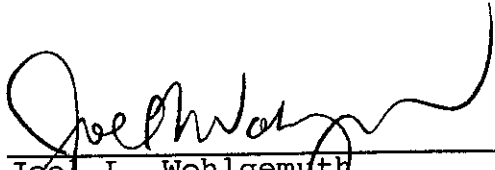
James C. Garland, Esq.  
Frasier & Frasier  
P.O. Box 799  
1700 Southwest Blvd., Suite 100  
Tulsa, OK 74107

Attorneys for Plaintiff,  
Marvin L. Morse and  
Terry Alan Jenkins



James W. Tilly, Esq.  
Rosenstein, Fist & Ringold  
525 South Main  
Suite 300  
Tulsa, OK 74103

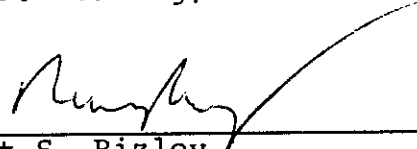
• Attorney for Defendant,  
Dean B. Knight



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Joel L. Wohlgemuth  
Norman, Wohlgemuth & Thompson  
909 Kennedy Building  
Tulsa, OK 74103

Attorneys for Defendant,  
Fred P. Leiding, Sr.



---

Robert S. Rizley  
Brewster, Shallcross & Rizley  
Park Tower, Suite 600  
5314 South Yale Ave.  
Tulsa, Oklahoma 74135

Attorneys for Defendant,  
Town & Country Bank

*original*  
**FILED**  
IN OPEN COURT

OCT 21 1985

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

TED V. TUCKER,

Plaintiff,

v.

Case No. 84-C-612-E

TETRA INTERNATIONAL CORPORATION,  
an Oklahoma corporation;  
TRAVIS G. MILLER; BILL R.  
FULKERSON; R. M. HOLT; RICHARD P.  
GEORGE; CHARLES H. LEE; HERVE B.  
COLLET; GENE COATS; and JOE DANDO,

Defendants.

ORDER

NOW, on this 21<sup>st</sup> day of October, 1985, Plaintiff's Application for an Order of Dismissal Without Prejudice comes on for consideration before the undersigned, and, the Court, after reviewing the Application filed herewith, finds as follows:

1. Plaintiff's dismissal without prejudice of the unadjudicated claims is requested to achieve judicial economy and not for the purpose of delay.

2. The reasons set forth in Plaintiff's Application are meritorious and warrant the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's unadjudicated claims (all claims except Plaintiff's Oklahoma Securities Act non-registration claim) are hereby dismissed without prejudice to Plaintiff's refiling of same.

IT IS SO ORDERED.

*James C. Silver*  
UNITED STATES DISTRICT JUDGE

FILED

OCT 21 1985

Jack C. Silver, Clerk  
U. S. DISTRICT COURT


THE OKLAHOMA COLLEGE OF  
OSTEOPATHIC MEDICINE AND  
SURGERY; et al.,

No. 84-C-722-

The Court being fully advised in the premises and upon consideration of the parties' Joint Application for Dismissal With Prejudice finds that such order should issue.

BE IT THEREFORE ORDERED, ADJUDGED AND DECREED that plain-  
tiffs' causes be and the same are hereby dismissed with  
prejudice; each of the parties to bear their respective costs.

Done and dated this 17<sup>th</sup> day of October, 1985.

  
THOMAS R. BRETT,  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

BOBBY L. POPE,

Plaintiff,

-vs

AMERICAN SERVICE LIFE  
INSURANCE COMPANY, a  
Foreign Insurance Corporation,

Defendant.

No. 85-C-284-B

FILED

OCT 21 1985

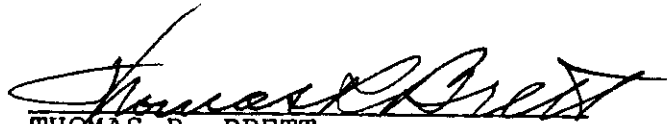
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER

NOW on this 17 day of October, 1985,

plaintiff's Application to Dismiss with Prejudice came on for hearing. The Court being fully advised in the premises finds that said Application should be sustained and the defendant, American Service Life Insurance Company be dismissed from the above entitled action with prejudice.

WHEREFORE IT IS ORDERED, ADJUDGED AND DECREED, that plaintiff's Application to Dismiss with Prejudice be sustained and the above captioned action be dismissed with prejudice.

  
THOMAS R. BRETT  
JUDGE OF THE UNITED STATES  
DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF OKLAHOMA

FILED

PAUL GILMORE,

Plaintiff,

-vs-

SOUTHWESTERN BELL TELEPHONE COMPANY,

Defendant.

OCT 21 1985

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

No. 85-C-635-B

ORDER OF DISMISSAL


On this 8th day of October, 1985, the above styled matter came on for hearing before the Honorable Thomas R. Brett, United States District Judge. The plaintiff appeared by Mr. Jay C. Baker, his Attorney; the defendant, Southwestern Bell Telephone Company, appeared by Mr. George Makohin, its Attorney.

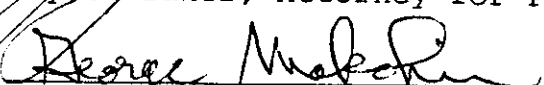
It appearing to the Court that there is an apparent defect of parties plaintiff and that the named defendant is not the proper defendant. The Court finds that this proceeding should be dismissed without prejudice.

IT IS, THEREFORE, ORDERED that the above styled proceeding be, and same is hereby, dismissed without prejudice.

  
Judge

APPROVED:

  
Jay C. Baker, Attorney for Plaintiff

  
George Makohin, Attorney for Defendant

FILED

OCT 17 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JOSEF E. KERCSO, et al,                    )  
  )  
                                  Plaintiffs,    )  
  )  
vs.    )  
  )  
NICHOLS PETROLEUM COMPANY,                )  
et al,                                        )  
  )  
                                  Defendants,    )  
  )  
vs.    )  
  )  
DeHAYDU INVESTMENT                        )  
SECURITIES, et al,                        )  
  )  
          Third Party Defendants.        )

No. 84-C-837-C

ORDER

It appearing to the satisfaction of this Court that all matters and controversies have been compromised by and between all remaining Plaintiffs and Defendant, Bright, Nichols, Zrenda and Dunn and John Nichols, as evidenced by the signatures of their attorneys on the stipulation filed herein; therefore,

IT IS ORDERED that the Plaintiffs' action against Defendants Bright, Nichols, Zrenda and Dunn and John Nichols

be, and the same is hereby, dismissed with prejudice only as to  
Bright, Nichols, Zrenda and Dunn and John Nichols; and

IT IS FURTHER ORDERED that each party shall be responsible  
for his own costs and attorney fees.

DATED October October 17, 1985.

(Signed) H. Dale Cook  
H. DALE COOK, Judge of the  
District Court

APPROVED AS TO FORM:

Dona K. Broyles  
Ben K. McGill  
Dona K. Broyles  
Attorneys for Plaintiffs

Richard P. Hix  
Richard P. Hix  
Attorney for Defendants  
John Nichols and Bright,  
Nichols, Zrenda & Dunn

0317k/DKB  
10/11/85

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PHOENIX COAL COMPANY, INC., )

Plaintiff, )

vs. )

No. 85-C-281-E

DONALD T. HODEL, Secretary )  
of the Interior, THE UNITED )  
STATES DEPARTMENT OF THE )  
INTERIOR, OFFICE OF SURFACE )  
MINING, )

Defendant. )

**F I L E D**

OCT 17 1985

O R D E R

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

This matter is now before the Court upon the motion of Defendant to dismiss. This action was filed March 20, 1985 for judicial review of certain decisions of the Secretary of Interior under the Surface Mining Control and Reclamation Act of 1977. 30 U.S.C. § 1201 et seq. Plaintiff brings this action for judicial review pursuant to 30 U.S.C. § 1276(a)(2), which provides in pertinent part as follows:

Any order or decision issued by the Secretary in a civil penalty proceeding or any other proceeding required to be conducted pursuant to § 554 of Title 5 shall be subject to judicial review on or before thirty days from the date of such order or decision in accordance with subsection (b) of this section in the United States District Court for the district in which the surface coal mining operation is located.

Subsection (b) provides that courts shall hear such petition solely on the record made before the Secretary. If the findings of the Secretary are supported by substantial evidence

on the record considered as a whole the findings shall be conclusive.

Defendant moves to dismiss the complaint arguing that plaintiff has failed to exhaust required administrative remedies before resort to the district court.

Plaintiff was issued a notice of violation resulting from a January 31, 1984 inspection of Plaintiff's mining site and a determination that Plaintiff had failed to reclaim lands disturbed by Leon's Coal Company, in violation of obligations assumed by Plaintiff under a transfer of the lease by a Trustee in the bankruptcy proceedings of Leon's Coal Company. A proposed civil penalty of \$22,500 was assessed for failure to abate the violations listed in the notice of violation.

A party may seek review of an action of the Secretary under 30 U.S.C. §§ 1268(a) and (c) by request for a formal hearing before the Secretary under 5 U.S.C. § 554 within thirty days after receiving the proposed penalty. This route requires a person to place the amount of the proposed penalty in escrow, said amount to be paid back with interest if it is determined that the penalty was improper. At this hearing both the fact of the violation and the amount of penalty may be challenged. The Secretary has by rule created an additional informal procedure for review of proposed penalties. Plaintiff requested such an informal hearing, and an assessment conference was held on the 20th of February, 1985. At this time the penalty for failure to abate violations was affirmed, and a "conclusion of conference" letter was sent to Plaintiff on February 21, 1985. The letter

included a notice to plaintiff that if he wished a formal hearing to contest the affirmed assessment, a petition for review must be submitted within fifteen days after receipt of the letter to the Office of Hearings and Appeals in the Department of Interior. This petition, by statute, must be accompanied by a check or money order in the amount equal to the total of the affirmed assessment, or, under 30 U.S.C. § 1268(c) the petitioner waives "all legal rights to contest the violation or the amount of the penalty".

Plaintiff did not take advantage of the final review procedure available under statute, but instead argues to this Court that, since it did not have the available funds to place in escrow, that it has made use of all administrative remedies available to it and is therefore entitled to seek review before this Court.

The Defendant argues, and this Court agrees, that there is no jurisdiction to review the Secretary's actions because the Plaintiff has failed to exhaust administrative remedies and to make a proper record for this Court to review. Section 1276(a)(2) provides for review of an order or decision of the Secretary in a civil penalty proceeding conducted pursuant to 5 U.S.C. § 554. A § 554 hearing is a formal adjudication which requires written findings and conclusions of the Secretary. A § 554 proceeding would create a verbatim hearing record and findings and conclusions for this Court to review. In addition, § 1276(b) provides that this Court may hear a petition or

complaint solely on the record made before the Secretary.

Several courts have held that a person charged with a violation under the Act may not invoke the jurisdiction of the district court to enjoin enforcement without first exhausting administrative remedies. See Shawnee Coal Company v. Andrus, 661 F.2d 1083 (6th Cir. 1981); Mullins Coal Company v. Clark, 759 F.2d 1142 (4th Cir. 1985).

The analysis of these courts is persuasive. The requirement that this Court's review be "solely on the record made before the Secretary" makes it plain that the statute "anticipates that judicial review will occur only after an administrative record has been compiled and an administrative decision rendered. Otherwise the language of subsection (b) is meaningless." Mullins Coal Company v. Clark, 759 F.2d at 1145. Exhaustion of administrative remedies allows the agency to act within its particular sphere of competency and creates a reasonable division of labor between the agency and the courts. Shawnee Coal Company v. Andrus, 661 F.2d at 1092. Plaintiff admits that the requirement of payment of the proposed penalty before final hearing is not violative of the due process clause of the constitution, and is not here attacking the available scheme of administrative remedies. Under the clear language of § 1268(c), Plaintiff's failure to pay into escrow the proposed assessment results in a waiver of all legal rights to contest the violation or the amount of the penalty. This requirement has been contested and has been found to be proper. See B & M Coal v. Office of Surface Mining Reclamation, 531 F.Supp. 677 (S.D. Ind.

1982); United States of America v. Local Coal Company, 82-C-149-E (N.D. Okla. Dec. 22, 1983). Plaintiff has therefore waived any right to legal action with regard to the propriety of the assessment.

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of Defendant to dismiss be and the same is hereby granted.

ORDERED this 17<sup>th</sup> day of October, 1985.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

FILED

OCT 16 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

Plaintiff,

V.

Case No. 85-C-707-C

WALTER C. GRAY and BEAR'S DEN,  
INC.,

Defendants.

The Court finds that the Defendant, Bear's Den, Inc. has previously been dismissed from these proceedings pursuant to Court Order dated September 13, 1985.

Upon application of Phoenix Federal Savings and Loan Association, Plaintiff, and Walter C. Gray, Defendant, as evidenced by their Dismissals on file herein, the Court finds that said Dismissals should be and the same are hereby approved and all claims and causes of action are hereby dismissed as recited in the Dismissals.

Dated this 15 day of October, 1985.

(Signed) H. Dale Cook

H. Dale Cook, Chief Judge  
U.S. District Court

FILED

OCT 16 1985

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

SUSAN K. BRINTON,

Plaintiff,

vs.

FIRAL RYDER, an individual  
doing business as Safari  
Management Company; and  
THOMAS SCHWEITZER, an  
individual,

Defendants.

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

No. 85-C-70-C

ORDER APPROVING STIPULATION  
FOR DISMISSAL WITHOUT PREJUDICE

On this 16 day of ~~September~~ October, 1985, this matter comes on  
for consideration by the Court of the Stipulation for Dismissal  
without Prejudice in the above-entitled action, with each party  
bearing its own costs; and the Court, having reviewed said  
Stipulation and being fully advised, finds same should be ap-  
proved and the same is hereby dismissed without prejudice.

  
H. DALE COOK  
UNITED STATES DISTRICT JUDGE

**FILED**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 85-C-477-E

*James O. Ellison*  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOSEF E. KERCSO, an individual, )  
ELISSA T. KERCSO, an individual, )  
ADOLPH P. ROSZKOWSKI, an individ- )  
ual, DELORES R. ROSZKOWSKI, an in- )  
dividual, JOHN H. EWERT, an indiv- )  
idual, MARGARET J. EWERT, an indiv- )  
idual, A. FRANCOIS DEPENDINGER, an )  
individual, LARRY H. HOLSWADE, an )  
individual, VINCENT F. PICCIONI, an )  
individual, and DAVID PRESSMAN, an )  
individual, )

Plaintiffs, )

v. )

NICHOLS PETROLEUM COMPANY, an Ok- )  
lahoma corporation, ORVILLE )  
NICHOLS, an individual, RICHARD )  
NICHOLS, an individual, LARRY R. )  
MANLEY, an individual, BRIGHT, )  
NICHOLS, ZRENDA & DUNN, an Okla- )  
homa professional corporation, )  
JOHN NICHOLS, an individual, STEVEN )  
M. WOOD, an individual, MIDWEST )  
PETROLEUM SUPPLY, INC., an Oklahoma )  
corporation, and RICARDO I. )  
RAMIREZ, an individual, )

Defendants, )

v. )

DeHAYDU INVESTMENT SECURITIES, )  
COAST COUNTY SECURITIES, INC., )  
IRENE DeHAYDU, ZOLTAN DeHAYDU, and )  
DAVID SIMCHO, )

Third-Party Defendants. )

**FILED**

**OCT 16 1985**

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 84-C-837-C

NOTICE OF DISMISSAL WITHOUT PREJUDICE

COME NOW the Third-Party Plaintiffs Bright, Nichols, Zrenda & Dunn and John Nichols, pursuant to Rule 41 of the Federal Rules of Civil Procedure, by and through their attorneys of record, Doerner, Stuart, Saunders, Daniel & Anderson, and hereby dismiss

(without prejudice) their claim filed in the above-referenced action against Third-Party Defendants DeHaydu Investment Securities, Coast County Securities, Inc., Irene DeHaydu, Zoltan DeHaydu and David Simcho.

WHEREFORE, Third-Party Plaintiffs Bright, Nichols, Zrenda & Dunn and John Nichols dismiss their claim without prejudice against the above-named Third-Party Defendants.

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

Richard P. Hix  
Kathy R. Neal

By: *[Signature]*  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211

Attorneys for the Defendants-Third-  
Party Plaintiffs, Bright, Nichols,  
Zrenda & Dunn and John Nichols

CERTIFICATE OF MAILING

I do hereby certify that on the 31<sup>st</sup> day of October, 1985, I mailed a true, correct and exact copy of the above and foregoing Notice of Dismissal Without Prejudice to:

Michael L. McHugh, Esquire  
5314 S. Yale, Suite 404  
Tulsa, Oklahoma 74136

Mike Barkley, Esquire  
Andrew S. Hartman, Esquire  
BARKLEY, ERNST, WHITE & HARTMAN  
Oneok Plaza, Suite 410  
100 W. 5th Street  
Tulsa, Oklahoma 74103

Ben K. McGill, Esquire  
Dona K. Broyles, Esquire  
OWENS & MCGILL, INC.  
1606 First National Building  
Tulsa, Oklahoma 74103

Jon R. Running, Esquire  
1700 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172

Shane Cortright, Esquire  
KURAHARA, MORRESSEY & STREET  
2355 Oakland Road  
San Jose, California 95131

with proper postage thereon fully prepaid.

*Richard P. Nix*

---

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 15 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

FLOYD H. CASKEY; SHAWN C. )  
CASKEY, a minor, by and through )  
his father and next friend, )  
FLOYD H. CASKEY; TODD A. CASKEY, )  
a minor, by and through his )  
father and next friend, )  
FLOYD H. CASKEY; and SCOTT )  
CASKEY, a minor, by and through )  
his father and next friend, )  
FLOYD H. CASKEY; )

Plaintiffs, )

vs. )

No. 85-C-153-C ✓

SOUTH PRAIRIE CONSTRUCTION )  
COMPANY; and GILBERT CENTRAL )  
CORPORATION, a foreign )  
corporation; )

Defendants and )  
Third-Party )  
Plaintiffs, )

vs. )

DEPARTMENT OF TRANSPORTATION, )  
STATE OF OKLAHOMA; )

Third-Party )  
Defendant. )

O R D E R

Now before the Court for its consideration is the motion of third-party defendant, State of Oklahoma, ex rel. Oklahoma Department of Transportation, to dismiss the third-party complaint, said motion filed herein on August 15, 1985. The defendants and third-party plaintiffs South Prairie Construction Company and Gilbert Central Corporation's having responded, the matter is now ready for this Court's determination.

Plaintiff Floyd H. Caskey brought this action to recover damages for personal injuries sustained by himself and his three minor sons when his vehicle allegedly ran into a pile of unmarked asphalt in the middle of U.S. Highway 69, in Mayes County, Oklahoma, approximately 1.3 miles north of Pryor, Oklahoma, causing his vehicle to overturn. The plaintiffs allege defendant South Prairie Construction Company and defendant Gilbert Central Corporation had been working on the highway and had negligently left it in a dangerous condition without adequate warning devices. Defendants, by answer of February 15, 1985, raised several defenses including contributory negligence and unavoidable accident.

The defendants filed a third-party complaint against the third-party defendant State of Oklahoma, ex rel. Oklahoma Department of Transportation on August 2, 1985. Such third-party complaint alleges the State of Oklahoma voluntarily assumed responsibility for the placing, marking, and/or barricading of the asphalt pile on the highway. In addition, the third-party complaint alleges the State of Oklahoma gave final acceptance and approval to the highway construction job, including the location of asphalt piles, warning devices and barricades. The State of Oklahoma responded to the third-party complaint by filing the motion at issue here.

The dispositive argument which the State of Oklahoma makes is that under the law of the State of Oklahoma, an agency of

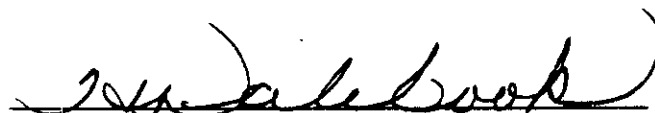
government such as the Department of Transportation involved here, enjoys governmental immunity from tort liability when performing governmental functions such as design, construction and maintenance of the state and federal highway systems.

In Ruble v. Department of Transportation, 660 P.2d 1049 (Okla. 1983), the Oklahoma Supreme Court stated that the building and maintaining of the state highway system is mandatory for the Department of Transportation and is clearly a governmental function pursuant to Art. 16, Sec. 1 of the Oklahoma Constitution. The third-party complaint alleges no facts to show that the State or its agents or employees had either consented to suit, waived their rights to governmental immunity, or were guilty of willful and wanton acts. As such the doctrine of sovereign immunity does apply, and the motion to dismiss should be granted.

In addition, this Court notes that both the abrogation of judicially-created governmental immunity as set forth in Vanderpool v. State of Oklahoma, et al., 672 P.2d 1153 (Okla. 1983), and the legislature's abrogation of governmental immunity set forth in Title 51 O.S. §151-171, as amended, are both inapplicable to the instant case by reason of the October 1, 1985, effective date of both the judicial and legislative pronouncements.

It is therefore Ordered that the motion of third-party defendants to dismiss should be and hereby is granted.

IT IS SO ORDERED this 15 day of October, 1985.

  
H. DALE COOK  
Chief Judge, U. S. District Court

*Entered*  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

E. LIGE and HELEN JOICE,  
and ROY LEON JOICE,

Plaintiffs,

v.

ROBERT L. BLAIR, R.E. BARNS,  
HOMER WALKER, JOHN THOMPSON,  
JENNIFER MOORE, DINIA L. BARNS,  
and DOES I THROUGH X,

Defendants.

No. 84-C-924-B1

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

OCT 11 1985

FILED

O R D E R

This matter comes before the Court on Defendant Dinia L. Barns' Motion to Dismiss. For the reasons stated below, the motion is granted.

On July 23, 1985, Defendant Dinia L. Barns petitioned this Court to dismiss plaintiff's claim against her. Plaintiff not responding within 10 days to that motion, the Court granted Defendant's motion on August 8, 1985, ruling that under Rule 14(a) of the Rules of the United States District Court for the Northern District of Oklahoma, plaintiff had confessed judgment to Defendant's motion. On Oct. 2, 1985, this order was rescinded and plaintiff was given an additional seven days in which to respond to Defendant's motion to dismiss. Plaintiff having not responded within the seven-day period, plaintiff has confessed judgment under local rule 14(a). Plaintiff's claim is hereby dismissed with prejudice.

IT IS SO ORDERED, this 11<sup>th</sup> day of October, 1985.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SOUTHERN ENERGY HOMES, INC., )

Plaintiff, )

vs. )

No. 85-C-163-E✓

ECONOMY HOUSING, INC. AND )  
JOE BRANSCUM, )

Defendants. )

O R D E R

FILED  
OCT 11 1985  
J. A. C. C. C. C.  
U. S. DISTRICT COURT

This matter is now before the Court upon the motion of Plaintiff for summary judgment. At the initial status conference held before the Court, it was agreed that this action would be submitted to the Court upon motions for summary judgment. Said motions were due thirty (30) days from the date of the conference, and responses were due thirty (30) days thereafter.

The complaint and supplemental complaint filed herein allege that the Defendant Economy Housing, Inc. is indebted to Southern Energy Homes, Inc. in the amount of \$142,262.89 for manufactured homes sold and delivered to Economy. It is alleged that Economy has refused and neglected to pay any part of the amount demanded. The complaint also alleges that Defendant Joe Branscum gave his personal guaranty to pay the indebtedness of Economy to Southern on the 6th of December, 1984 but that Mr. Branscum has also refused to pay despite a demand. The supplement to the complaint asserts that the Defendant Economy Housing, Inc. assigned a promissory note to the Plaintiff but has refused to remit the proceeds of said note following payment.

The allegations of Plaintiff are supported by the affidavit of Wendell Batchelor, president of Southern Energy Homes, Inc. His affidavit and attached documents show an amount owed to Plaintiff of \$143,262.89 for manufactured homes sold and delivered. Exhibit A attaches invoices for the homes delivered, and presents a summary of the amounts owed to Plaintiff for those homes delivered. The summary reflects money owed in the amount of \$214,632.42 less an amount indicated for Jessie Howell of \$67,000 and subtracting the statement for MPO parts in the amount of \$4,369.53, for a net amount owed of \$143,362.89.

The affidavit of Mr. Batchelor also reflects a statement that Defendant Branscum signed a personal guaranty on December 6, 1984 which unconditionally and irrevocably guaranteed the indebtedness of the economy to Southern. Attached as Exhibit B to the affidavit is a copy of the personal guaranty under which the undersigned "unconditionally, irrevocably and absolutely guarantees all obligations and indebtedness now existing or hereafter owing by Economy Housing, Inc. to Southern Energy Homes, Inc.". Although Exhibit B does not show the signature of Joe Branscum, Mr. Batchelor's affidavit indicates that the guarantee was signed.

Attached as exhibit B to the supplemental complaint is a note signed by Dee and Robin Burton to the order of Economy Housing, Inc. in the amount of \$6,200. Attached as Exhibit C is an assignment of said note, among others, to Southern Energy Homes, Inc. by Joe Branscum, as president of Economy Homes, Inc. Attached as Exhibit D to the supplement to the complaint is

a copy of a check from Robin J. Burton in the amount of \$6,200 paid out to Economy Housing, Inc. on March 28, 1985. The memo note on the check states "For note on mobile home paid in full".

Referring to these attached documents, Mr. Batchelor's affidavit states that the promissory note was assigned to Plaintiff on the 25th of January, 1985 as part payment of the indebtedness of Defendants to plaintiff, and that Plaintiff was advised on the 15th of April, 1985 that the Burtons had paid the note to Economy, but although Defendant Branscum acknowledges the assignment Economy has refused to remit the proceeds.

In answer to the motion for summary judgment Defendants admit there is an indebtedness owed to Plaintiff but denies that the amount owed is \$143,262.89. Defendants argue they are entitled to certain set offs in the approximate amount of \$30,000 for warranty service work not performed by Plaintiff. However, Defendants have failed, pursuant to Rule 14(a) of the Rules of the United States District Court for the Northern District of Oklahoma, and Rule 56(e) of the Federal Rules of Civil Procedure to adequately set forth specific facts showing there is a genuine issue for trial. When a motion for summary judgment is made, a party may not rest upon allegations or denials in the pleadings but the response must, by affidavit or otherwise, set forth specific facts showing that there is a genuine issue for trial. Rule 56(e). Summary judgment may be granted on affidavits which are not offset by opposing affidavits. Brown v. Ford Motor Co., 494 F.2d 418 (10th Cir. 1974).

Although Defendants have alleged they are entitled to a set off, they have not supported their allegations by anything other than statements in the pleadings, and have not specifically responded to the motion for summary judgment in the way contemplated by the rules. Neither have Defendants requested any time from this Court to prepare proper affidavits. Upon this basis, and upon the properly supported motion of the Plaintiff for summary judgment, this Court finds that the motion should be granted in all aspects.

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of Plaintiff for summary judgment be and the same is hereby granted.

ORDERED this 11<sup>th</sup> day of October, 1985.

  
\_\_\_\_\_  
JAMES P. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SOUTHERN ENERGY HOMES, INC., )

Plaintiff, )

vs. )

No. 85-C-163-E ✓

ECONOMY HOUSING, INC., AND )  
JOE BRANSCUM, )

Defendants. )

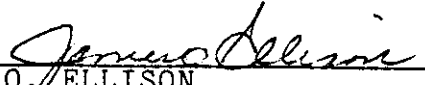
OCT 11 1985

JUDGMENT

This action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiff Southern Energy Homes, Inc. recover of the Defendants Economy Housing, Inc. and Joe Branscum the sum of \$143,262.89 for homes sold and delivered and \$6,200.00 proceeds of an assigned note, with interest thereon at the rate of 7.87% per cent as provided by law, and its costs of action.

DATED at Tulsa, Oklahoma this 11th day of October, 1985.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 10 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRENDA WALLER, a/k/a

BRENDA J. WALLER,

Defendant.

CIVIL ACTION NO. 85-C-337-C

AGREED JUDGMENT

This matter comes on for consideration this 10 day  
of Oct, 1985, the Plaintiff appearing by Layn R.  
Phillips, United States Attorney for the Northern District of  
Oklahoma, through Hubert A. Marlow, Assistant United States  
Attorney, and the Defendant, Brenda Waller, a/k/a Brenda J.  
Waller, appearing pro se.

The Court, being fully advised and having examined the  
file herein, finds that Defendant, Brenda Waller, a/k/a Brenda J.  
Waller, was served with Summons and Complaint on June 12, 1985.  
The Defendant has not filed her Answer but in lieu thereof has  
agreed that she is indebted to the Plaintiff in the amount of  
\$1,146.00, plus the accrued interest of \$582.20 as of March 11,  
1985, (less the amount of \$110.00 which has been paid), plus  
interest at 7 percent per annum from March 11, 1985, until  
judgment, plus interest thereafter at the legal rate from the  
date of judgment until paid, plus the costs of this action.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that  
the Plaintiff have and recover judgment against the Defendant,

Brenda Waller, a/k/a Brenda J. Waller, for the principal sum of \$1,146.00, plus the accrued interest of \$582.20 as of March 11, 1985, (less the amount of \$110.00 which has been paid), plus interest at 7 percent per annum from March 11, 1985, until judgment, plus interest thereafter at the current legal rate of 7.87 percent from the date of judgment until paid, plus the costs of this action.

1314 Dale Cook  
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS  
United States Attorney

Hubert A. Marlow  
HUBERT A. MARLOW  
Assistant U.S. Attorney

Brenda Waller  
BRENDA WALLER, a/k/a  
BRENDA J. WALLER

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JIMMY LEE PATTON,  
Plaintiff,

vs.

DAVID YOUNG, et al.,  
Defendants.

No. 82-C-1043-E

FILED

OCT 10 1985

Jack C. Silver, Clerk  
U. S. DISTRICT COURT


ADMINISTRATIVE CLOSING ORDER

The Defendants David Young and B. J. Whitworth having filed procedural plans for dealing with the processing and detention of persons through the Creek County Jail and these proceedings being mooted thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

Injunctive relief is denied based upon the submission of the above described plans.

If, within one (1) year of this date the parties have not moved to reopen by virtue of violations of prisoners' rights arising out of the plans filed herein, this action shall be deemed dismissed with prejudice.

It is so ORDERED this 10<sup>th</sup> day of October, 1985.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 10 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

PHOENIX FEDERAL SAVINGS AND  
LOAN ASSOCIATION,

Plaintiff,

v.

WALTER C. GRAY and BEAR'S DEN,  
INC.,

Defendants.

Case No. 85-C-707-C

*Stipulation of* DISMISSALS


The Plaintiff, Phoenix Federal Savings and Loan Association, and the Defendant Walter C. Gray have settled and compromised the issues presented in the claims asserted by the Plaintiff against the Defendant and the Counterclaim asserted by the Defendant against the Plaintiff, material portions of which include a complete quit claim by Walter C. Gray to Phoenix Federal of all right, title and interest in and to the subject property subject to the mortgage to Phoenix Federal which shall not merge into the title, a release of Walter C. Gray from any liability upon the indebtednesses to Phoenix Federal recited in the Petition and all amendments thereto and a dismissal of the claims asserted herein by Phoenix Federal against Walter Gray and the claims asserted by Walter Gray herein against Phoenix Federal.

Phoenix Federal does hereby release Walter C. Gray from any personal liability upon the indebtednesses recited in the


Petition and all amendments thereto and does hereby dismiss the actions, insofar as Walter C. Gray is concerned, with prejudice, reserving all of its rights insofar as the mortgages and other security agreements are concerned. Phoenix Federal Savings and Loan Association does hereby dismiss, without prejudice, the balance of its claims asserted herein.

Walter C. Gray does hereby dismiss with prejudice all claims asserted herein against Phoenix Federal Savings and Loan Association.

Dated this 8th day of October, 1985.

  
\_\_\_\_\_  
Richard W. Gable  
Gable & Gotwals  
20th Floor, Fourth National Bank  
Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

Attorneys for Phoenix Federal  
Savings and Loan Association

  
\_\_\_\_\_  
Lloyd E. Cole, Jr.  
203 West Division Street  
Stillwell, Oklahoma 74960-3011

Attorney for Walter C. Gray

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 10 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

TINKER CREDIT UNION,  
Plaintiff,  
v.  
STEVE LEE OSBORN and  
DEBORAH S. OSBORN,  
Defendants,  
NATIONAL CREDIT UNION  
ADMINISTRATION,  
Third Party Defendant.

No. 84-C-854-C

O R D E R

The Court has for consideration the Findings and Recommendations of the Magistrate filed September 27, 1985 in which the Magistrate recommends that Third Party Plaintiff Tinker Credit Union's Motion to Remand be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues presented, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is therefore Ordered that Tinker Credit Union's Motion to Remand is granted, and the case is remanded to the District Court in and for Tulsa County, State of Oklahoma, pursuant to 28 U.S.C. § 1447(c), with each party to pay their own costs.

Dated this 10 day of October, 1985.

  
H. DALE COOK  
CHIEF JUDGE

*Entered*

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

OCT 10 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN P. HARLEY

Defendant.

CIVIL ACTION NO. 85-C-467-B

DEFAULT JUDGMENT

This matter comes on for consideration this 10<sup>th</sup> day of September, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Hubert A. Marlow, Assistant United States Attorney, and the Defendant, John P. Harley, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, John P. Harley, acknowledged receipt of Summons and Complaint on May 29, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, John P. Harley, for the principal sum of \$766.86, plus accrued interest of \$366.27 as

of April 1, 1985, plus interest on the principal sum of \$766.86 at 7 percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT

---

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 10 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

ROBERT E. KOHLER, a single )

person; BILL JONES ELECTRIC, )

INCORPORATED, an Oklahoma )

corporation, d/b/a ALLEN )

ELECTRIC COMPANY; COUNTY )

TREASURER, Tulsa County, )

Oklahoma, and BOARD OF COUNTY )

COMMISSIONERS, Tulsa County, )

Oklahoma, )

Defendants. ) CIVIL ACTION NO. 85-C-576-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 10 day  
of Oct, 1985. Plaintiff appears by Layn R.

Phillips, United States Attorney for the Northern District of  
Oklahoma through Peter Bernhardt, Assistant United States  
Attorney. The Defendants, County Treasurer and Board of County  
Commissioners, Tulsa County, Oklahoma, appear by Susan K.  
Morgan, Assistant District Attorney, Tulsa County, Oklahoma;  
the Defendant, Robert E. Kohler, appears not, but makes  
default; and the Defendant Bill Jones Electric Incorporated, an  
Oklahoma corporation d/b/a Allen Electric Company, appears not,  
but makes default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, County Treasurer, Tulsa  
County, Oklahoma, acknowledged receipt of Summons and Complaint

on June 19, 1985, that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 20, 1985; that the Defendant, Robert E. Kohler was served with Summons and Complaint on July 15, 1985; and that the Defendant, Bill Jones Electric Incorporated, an Oklahoma corporation, d/b/a Allen Electric Company, acknowledged receipt of Summons and Complaint of June 21, 1985. It appears that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have filed their Answers on July 8, 1985, and that the Defendants, Robert E. Kohler and Bill Jones Electric Incorporated, an Oklahoma corporation d/b/a Allen Electric Company, have failed to answer and their default has been entered by the Clerk of this Court on August 6, 1985, and August 8, 1985, respectively.

The Court finds that this is a suit based upon a certain promissory note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma.

Lot Ten (10), and a triangle in the Northeast Corner of Lot Nine (9), Block One (1), KOONCE ADDITION, A Subdivision to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof, more particularly described as follows, to wit: BEGINNING, 13 Feet South of the Northeast Corner of Lot 9, Thence Northwest to the Northwest Corner of Lot 9, Thence East to the Northeast Corner of Lot 9, Thence South 13 Feet to the point of beginning.

The Court further finds that on July 24, 1984, Robert E. Kohler, executed and delivered to the United States of America acting through the Administrator of Veterans Affairs, his promissory note in the amount of Thirty-Five Thousand Five Hundred Dollars (\$35,500.00) payable in monthly installments, with interest thereon at the rate of fourteen (14) percent per annum.

The Court further finds that as security for the payment of the above described note, Robert E. Kohler executed and delivered to the United States of America, acting through the Administrator of Veterans' Affairs, a real estate mortgage dated July 24 1984, covering the above described property. Said mortgage was recorded in Book 4806, Page 1849, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Robert E. Kohler, made default under the terms of the aforesaid promissory note and mortgage by reason of his failure to make monthly installments due thereon, which default has continued and that by reason thereof the Defendant, Robert E. Kohler is indebted to the Plaintiff in the principal sum of \$35,627.33, plus interest at the rate of 14 percent per annum from November 1, 1984, or \$13.68 per day until judgment, plus interest thereafter at the legal rate until fully paid, the costs of this action accrued and accruing.

The Court further finds that there are currently no ad valorem or personal taxes due relating to the property which is the subject matter of this action, and that there exist no liens on the subject property in favor of the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff, United States of America, have and recover judgment against the Defendant, Robert E. Kohler, in the amount of \$35,627.33, plus interest at the rate of 14 percent per annum from November 1, 1984, or \$13.68 per day until judgment, plus interest thereafter at the legal rate of 7.87% percent per annum until paid, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon failure of the Defendant, Robert E. Kohler, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma commanding him to advertise and sell with appraisement the real property herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including costs of the sale of said real property.

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

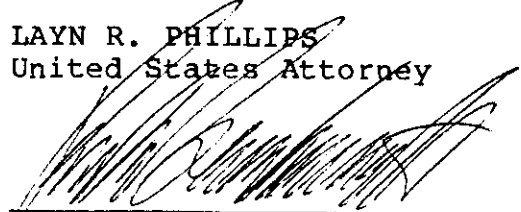
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of the above described real property, under and by virtue of this judgment and decree, the Defendants and all persons claiming under them since the filing of this Complaint, be and they are forever barred and foreclosed of any right, title, interest of claim in or to the subject real property or any part thereof.

  
UNITED STATES DISTRICT JUDGE


APPROVED:

LAYN R. PHILLIPS  
United States Attorney



---

PETER BERNHARDT  
Assistant United States Attorney



---

SUSAN K. MORGAN  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

PETROLEUM RESERVE CORPORATION, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ELISE VAN WINKLE, )  
 )  
Defendant. )

No. 85-C-598-E

**FILED**


**OCT 10 1985**

ORDER

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

This matter comes before the Court on Plaintiff's Application for Transfer of the matter matter to the United States District Court for the District of Maine. Being advised in the premises and noting that Defendant's counsel has no objection to the transfer, the Court finds Plaintiff's Application for Transfer should be granted.

IT IS THEREFORE ORDERED this matter is hereby transferred to the United States District Court for the District of Maine.

  
James O. Ellison  
United States District Judge

*Entered*

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

OCT 10 1985

LESLIE C. SILVER, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MICHAEL L. NORTON, )  
 )  
Defendant. )

CIVIL ACTION NO. 85-C-765-B

AGREED JUDGMENT

This matter comes on for consideration this 27  
day of September, 1985, the Plaintiff appearing by Layn R.  
Phillips, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States Attorney,  
and the Defendant, Michael L. Norton, appearing pro se.

The Court, being fully advised and having examined the  
file herein, finds that the Defendant, Michael L. Norton,  
acknowledged receipt of Summons and Complaint on September 1, 1985.  
The Defendant has not filed an Answer but in lieu thereof has agreed  
that he is indebted to the Plaintiff in the amount alleged in the  
Complaint and that judgment may accordingly be entered against  
Michael L. Norton in the amount of \$580.80, plus interest at the  
rate of 15.05 percent per annum and administrative costs of \$.61 per  
month from July 27, 1983, and \$.68 per month from January 1, 1984,  
until judgment, plus interest thereafter at the legal rate until  
paid, plus the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Michael L. Norton, in the amount of \$580.80, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.61 per month from July 27, 1983, and \$.68 per month from January 1, 1984, until judgment, plus interest at the current legal rate of 7.87 percent from the date of judgment until paid, plus costs of this action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS  
United States Attorney



PETER BERNHARDT  
Assistant U.S. Attorney

  
MICHAEL L. NORTON

*Entered*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMES LEON WELLS,

Plaintiff,

v.

KERR GLASS MANUFACTURING  
CORPORATION,

Defendant.

No. 85-C-845-B ✓

**FILED**

OCT 10 1985 *uf*

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

Upon the agreement of the parties that this matter should be remanded to the District Court of Tulsa County, Oklahoma, the motion for remand is hereby granted.

IT IS SO ORDERED, this 10<sup>th</sup> day of October, 1985.

*Thomas R. Brett*  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SOUTHLAND ENERGY CORP.,  
Plaintiff,  
v.  
UNITED STATES OF AMERICA,  
Defendant.

No. 85-C-382-B ✓

**FILED**

OCT - 9 1985 *hmm*

ADMINISTRATIVE CLOSING ORDER

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

The parties having requested at status conference that this matter be stayed pending final resolution of related matters docketed in the U.S. Tax Court as Deutsche Corporation and Subsidiaries v. Commissioner, Docket Nos. 26000-82 and 12708-82, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within 60 days of a final adjudication of the proceedings in the U.S. Tax Court, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED, this 9<sup>th</sup> day of October, 1985.

*Thomas R. Brett*  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

ROSCOE LARRETTE MORRIS,  
Plaintiff,

v.

PETER A. DOUGLAS, et al.,  
Defendants.


OCT -9 1985

JACK C. SILVER, CLERK  
No. 84-C-93 SD DISTRICT COURT

FINDINGS AND RECOMMENDATIONS OF MAGISTRATE

On October 3, 1985 Assistant Attorney General Linda Gray advised the Magistrate that Plaintiff has completed his term of imprisonment and been released. Rita Modesto, of the Department of Corrections, Central Records Department, confirmed over the telephone on October 8, 1985 that Plaintiff has been discharged from custody and is now free under the supervision of the Probation Department. Therefore, it is respectfully recommended that the Petition for Habeas Corpus should be dismissed as moot.

Dated this 8th day of October, 1985.

  
John Leo Wagner  
United States Magistrate

FILED

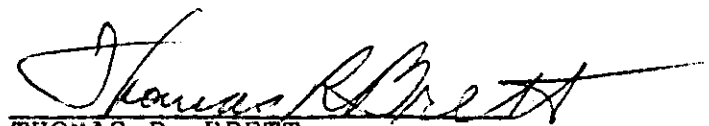
OCT -9 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

ORDER

The Court hereby adopts the Findings and Conclusions of the Magistrate, and finds that this case is moot, and should be dismissed.

It is so Ordered this 9th day of October, 1985.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OCT - 9 1985

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

VIRGIL HOLDING, Individually )  
and as Administrator of the )  
Estate of Delbert Wayne )  
Holding, Deceased, )

Plaintiff, )

vs. )

SPEEDWAY TRANSPORTATION, INC., )  
AND GREAT WEST CASUALTY )  
COMPANY, )

Defendants and )  
Third Party )  
Plaintiffs, )

vs. )

VIRGIL HOLDING, Individually )  
and as Administrator of the )  
Estate of Delbert Wayne )  
Holding, Deceased, )

Third Party Defendant, )

and )

VIRGINIA BARNES, individually )  
and as Administrator of the )  
Estate of Sammy Lee Riley, )  
Deceased, )

Plaintiff, )

vs. )

SPEEDWAY TRANSPORTATION, )  
INC. AND GREAT WEST )  
CASUALTY COMPANY, )

Defendants and )  
Third Party )  
Plaintiff, )

vs. )

VIRGINIA BARNES, Administrator )  
of the Estate of Sammy Lee )  
Riley, Deceased, )

Third Party Defendant. )

No. 84-C-550-E  
and 84-C-600-E  
(Consolidated)

AMENDED JUDGMENT

This action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and a judgment was entered on September 23, 1985. Upon application of Plaintiff Virgil Holding the Court now amends the original judgment as follows:


IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff Virgil Holding recover of the Defendants Speedway Transportation, Inc. and Great Western Casualty Company the sum of \$7,655.82 with interest thereon at the rate of 7.91% as provided by law and his costs of action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff Virginia Barnes recover of the Defendants Speedway Transportation, Inc. and Great Western Casualty Company the sum of \$1,250.11 with interest thereon at the rate of 7.91% as provided by law and her costs of action.

Defendant's counterclaim also came on for hearing before this Court and the issues having been duly heard and a decision having been duly rendered,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendants Speedway Transportation, Inc. and Great Western Casualty Company recover of the Plaintiff Virgil Holding, as administrator of the Estate of Delbert Wayne Holding and Virginia Barnes, as administrator of the Estate of Sammy Lee Riley on the counterclaim in the amount of \$10,625.79 and that Defendants be awarded costs of this action.

DATED at Tulsa, Oklahoma this 20th day of September, 1985.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OCT 9 1985

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

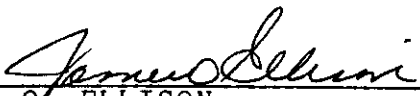
DATAQ, INC., )  
 )  
Plaintiff, )  
 )  
vs. ) No. 78-C-484-E  
 )  
TOKHEIM CORPORATION, )  
 )  
Defendants. )

JUDGMENT

This action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiff Dataq, Inc. take nothing from the Defendant Tokheim Corporation with regard to its claims against the MEMS I and MEMS II dispensing systems, that the action as to the MEMS I and MEMS II systems be dismissed on the merits, and that the Defendant Tokheim Corporation recover of the Plaintiff Dataq, Inc. its costs of action with regard to the defense of these claims.

DATED at Tulsa, Oklahoma this 8<sup>th</sup> day of October, 1985.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

L & L MOTOR FREIGHT, INC., )  
a corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CONTINENTAL CASUALTY COMPANY, )  
a corporation, )  
 )  
Defendant. )

NO. 85-C-139-E

FILED

OCT - 9 1985

Jack C. Smith, Clerk  
U. S. DISTRICT COURT

ORDER OF DISMISSAL

Upon the application of the plaintiff and for good  
cause shown, this action is dismissed with prejudice.

S/ JAMES O. ELISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT IN  
AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

Steven Ingram and Deborah  
Ingram

Plaintiff

vs.

Glass Trucking Company and  
Marvin E. Shiever,

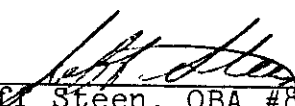
Defendants

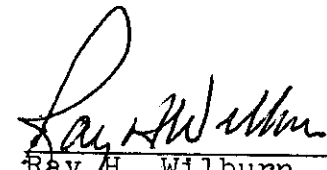
Case No. 85-C-807-E ✓

CLERK  
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL

Come now the Plaintiffs, and dismiss this action without  
predjudice to its refiling.

  
Jeff Steen, OBA #8584  
Attorney for Plaintiff  
404 W. Broadway  
Broken Arrow, Ok. 74012  
918-258-6522

  
Ray H. Wilburn  
Attorney for Defendants  
2512-E East 71st St.  
Tulsa, Ok. 74136

*Entered*  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT -8 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

HARLEY INDUSTRIES, an  
Oklahoma corporation,

Plaintiff,

vs.

PENGO INDUSTRIES, INC.,  
a Texas corporation,

Defendant.


No. 85-C-440-B

STIPULATION OF DISMISSAL

The Plaintiff, Harley Industries, by and through their attorneys of record, Malloy and Elder, and the Defendant, Pengo Industries, Inc., by and through their attorneys of record, Linn and Helms, stipulate pursuant to Rules 41(a) of the Federal Rules of Civil Procedure that all causes of action filed by the Plaintiff against the Defendant, shall be and are hereby dismissed with prejudice.


MALLOY & ELDER

By

  
N. Keith Martin, OBA 5740  
1924 South Utica, Suite 820  
Tulsa, Oklahoma 74104  
(918) 749-6692  
Attorneys for Plaintiff

LINN AND HELMS

By

  
Tamsy R. Sandford  
400 Fidelity Plaza  
Oklahoma City, OK 73102  
Attorneys for Defendant

CERTIFICATE OF MAILING

I, N. Keith Martin, hereby certify that on the date on which this document is file stamped, mailed a true and correct copy of the above and foregoing instrument by depositing same in the United States mail, postage pre-paid thereon, to Ms. Tamsy R. Sandford, Linn and Helms, Attorneys at Law, 400 Fidelity Plaza, Oklahoma City, Oklahoma, 73102.

  
N. Keith Martin

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SOONER ASSOCIATION, a New  
Mexico limited partnership,  
and its general partners,  
W. H. CUNICO and C. B.  
WATSON,

Plaintiffs,

v.

BANK OF COMMERCE AND TRUST  
COMPANY, S & T GAS TRANS-  
MISSION COMPANY, WELLHEAD  
ENTERPRISES, INC., and  
KERR-McGEE CORPORATION,

Defendants.

Case No. 84-C-771-B ✓

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

OCT - 8 1985

FILED

ORDER OF DISMISSAL

Pursuant to Rule 41, Federal Rules of Civil Procedure,  
and upon stipulation of the parties and their respective  
counsel filed in the above entitled cause, the plaintiffs'  
action against defendant Kerr-McGee Corporation is hereby  
dismissed and the crossclaims of Kerr-McGee Corporation  
against defendants Wellhead Enterprises, Inc. and S & T Gas  
Transmission Company are hereby dismissed.

Dated this 8<sup>th</sup> day of October, 1985.

  
Thomas R. Brett  
United States District Judge

*Entered*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OCT -7 1985  
JAMES P. McCANN  
U.S. DISTRICT COURT

EASTMAN KODAK COMPANY, a New Jersey corporation,

Plaintiff,

v.

No. 84-C-697-B ✓

INDUSTRIAL FABRICATING  
COMPANY, an Oklahoma corporation,

Defendant.

STIPULATION OF VOLUNTARY DISMISSAL

COME NOW Eastman Kodak Company, Plaintiff herein, and Industrial Fabricating Company, Defendant herein, by and through their respective counsel, and, pursuant to the provisions of Rule 41(a), Fed. R. Civ. P., voluntarily dismiss the above-captioned matter, currently pending before the Court, which Dismissal is without prejudice. Each of the parties to this suit is to bear its own costs and attorneys' fees.

MACK MURATET BRALY  
& ASSOCIATES

By: 

Paul L. Mueller  
1516 S. Boston  
Suite 320  
Tulsa, Oklahoma 74119  
(918) 582-2806

Attorneys for Plaintiff,  
Eastman Kodak Company

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

By: 

Sam P. Daniel, Jr.  
James P. McCann  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211

Attorneys for Defendant,  
Industrial Fabricating Company

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

OCT - 1985

MEARION JAMES HORTON,

Plaintiff,

vs.

No. 83-C-577-E

GARY DALE WATKINS,

JOHN DOE d/b/a

SCHAFER TRUCKING COMPANY, and

RICHARD ROE d/b/a

WAKES FARM & FEED COMPANY,

Defendants.

ORDER OF DISMISSAL

NOW on this 7th day of October, 1985, the above entitled cause comes on before me, the undersigned Judge, upon the stipulation of Dismissal filed by the parties hereto, and the Court, finding that the parties hereto have settled the issues and disputes, finds that this matter should be dismissed, with prejudice, as to Defendant RICHARD ROE d/b/a WAKES FARM & FEED COMPANY, the Court having heretofore dismissed the remaining Defendants, GARY DALE WATKINS and JOHN DOE d/b/a SCHAFER TRUCKING COMPANY.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff's claims against the Defendant, RICHARD ROE d/b/a WAKES FARM & FEED COMPANY be, and they are hereby dismissed with prejudice.

S/ JAMES O. ELLISON

JAMES O. ELLISON  
United States District Court Judge

*Entered*

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OCT - 7 1985 *ug*

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

PAUL WM. POLIN & MARSHA POLIN, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
JEWS FOR JESUS, et al., )  
 )  
Defendants. )

No. 85-C-424-B ✓

O R D E R

This matter comes before the Court on defendants' motions to dismiss.<sup>1</sup> For the reasons set forth below, the motions are sustained.

On August 1, 1985, the Court granted plaintiffs, Paul Wm. Polin and Marsha Polin, leave to file a First Amended Complaint. Though defendants had filed a "first round" of motions to dismiss, plaintiffs chose not to respond thereto and instead sought leave to amend their complaint so as to correct problems of lack of subject matter jurisdiction raised by defendants. The First Amended Complaint, filed August 2, 1985, sets forth three causes of action. In Count I, plaintiffs allege a cause of action pursuant to 76 Okl.St.Ann. §8 against defendant Jews for Jesus, a/k/a Hineni Ministries ("Jews for Jesus"), for enticement of a child from its parents. Count II alleges a cause of action against defendants Jews for Jesus, Moishe Rosen, Ceil Rose and Susan Perlman for false light invasion of privacy. Count III

---

<sup>1</sup> Plaintiffs have failed to obtain service upon defendant Judy Pecknick. All other defendants have filed motions to dismiss.

alleges a cause of action against defendants Donna Hull, Lucy Ward, George Pecknick, Judy Pecknick, Dore Schupack, Phylliss Hewitt, and Charles Pack for enticement of a child from its parents. Like Count I, Count III is filed pursuant to 76 Okl.Stat.Ann. §8. Plaintiffs' First Amended Complaint merely splits Count I of the original Complaint into two separate causes of action, one (Count I) against a diverse defendant, the other (Count III) against non-diverse defendants.

Plaintiffs are citizens of the State of Oklahoma. Defendant Jews for Jesus is a California corporation "with its principal offices in the State of California." First Amended Complaint, p. 1. Defendants Moishe Rosen, Ceil Rose and Susan Perlman are residents of the State of California. All other defendants are, like plaintiffs, citizens of the State of Oklahoma.

Defendants' second round of motions to dismiss, by necessity nearly identical to their first round, are grounded in several theories, the primary theory being one of lack of subject matter jurisdiction for lack of complete diversity.

The relevant statute in this case, 28 U.S.C. §1332(a)(1), confers upon federal courts jurisdiction over "civil actions where the matter in controversy exceeds the sum or value of \$10,000 ... and is between ... citizens of different states." "This statute and its predecessors have consistently been held to require complete diversity of citizenship." Owen Equipment and Erection Co. v. Kroger, 437 U.S. 365, 373 (1978); Strawbridge v. Curtiss, 3 Cranch 267 (1805). Diversity jurisdiction does not

exist unless each defendant is a citizen of a different state from each plaintiff.

The policy of section 1332 calls for strict construction. Owen Equipment and Erection Co. v. Kroger, 437 U.S. at 377. Plaintiffs argue that since Count I and Count II are framed against diverse parties, the Court can and should exercise jurisdiction over the entire action upon the doctrines of ancillary and pendent jurisdiction. To do so herein would make a sham of the requirement for diversity of citizenship. As the Supreme Court stated in Owen Equipment at 377:

"[N]either the convenience of litigants nor considerations of judicial economy can suffice to justify extension of the doctrine of ancillary jurisdiction to a plaintiff's cause of action against a citizen of the same State in a diversity case."

The doctrine of pendent claim jurisdiction, inapplicable to the facts herein, applies only when a party seeks to adjudicate a jurisdictionally insufficient claim as an adjunct to the court's determination of a jurisdictionally sufficient federal question claim, and then only when the two claims "derive from a common nucleus of operative fact." United Mine Workers of America v. Gibbs, 383 U.S. 715, 725 (1966); Aldinger v. Howard, 427 U.S. 1, 9 (1976). Plaintiffs make no federal question claim herein.

To allow plaintiff to split a cause of action based on a state statute into two claims, one against a diverse defendant, the other against non-diverse defendants, would flout the congressional command of §1332. Owen Equipment at 374-5, 377. See also J. M. Resources, Inc. v. Petro-Pak Resources, Ltd., 581

F.Supp. 629, 630-33 (D.Colo. 1984) rejecting plaintiff's theory of pendent party jurisdiction.

Accordingly, defendants' motions to dismiss are granted for want of complete diversity.

IT IS SO ORDERED this 7<sup>th</sup> day of October, 1985.

A handwritten signature in cursive script, reading "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OCT -4 1985

JACK O. DUNN, CLERK  
U.S. DISTRICT COURT

ROBERT E. HOWARD,

Plaintiff,

v.

COMMERCIAL PLASTICS SYSTEMS, INC.,  
a Delaware corporation,

Defendant.

No. 85-C-461-B

O R D E R

This matter comes before the Court on Defendant's Motion to Dismiss for lack of personal jurisdiction. For the reasons stated below, the motion is granted.

This is a suit alleging breach of an oral agreement by which plaintiff was to receive a finder's fee if he secured a buyer for certain railway cars defendant sought to sell. Plaintiff alleges that through his efforts a buyer for some 350 cars was found, and the sale of the cars was completed, but that he was not paid his fee. Defendant contends that no such agreement was made.

The Due Process Clause of the Fourteenth Amendment requires that before a valid personal judgment can be rendered against a defendant, the defendant must be given notice of the suit, Mullane v. Central Hanover Trust Co., 339 U.S. 306, 313-314 (1950), and be subject to the personal jurisdiction of the court, International Shoe Co. v. Washington, 326 U.S. 310 (1945). The issue before the Court is whether defendant has had sufficient contacts with the

state of Oklahoma so that this Court can exercise personal jurisdiction over him.

Under the Oklahoma Pleading Code, 12 Okl.St. Ann. §2001 et seq., a state court may exercise jurisdiction "on any basis consistent with the Constitution of this state and the Constitution of the United States." 12 Okl.St. Ann. §2004(F). The Oklahoma statute thus allows the exercise of jurisdiction to the lawful limit. The principal limitation on the exercise of jurisdiction is the Due Process Clause of the Fourteenth Amendment. World-Wide Volkswagen v. Woodson, 444 U.S. 286, 291 (1979). Once the jurisdiction of a court to hear a matter has been challenged, the burden of proof falls upon the party asserting jurisdiction to prove that fact by a preponderance of the evidence. Jim Marrs Drilling Co., Inc. v. Woolard, 629 P.2d 810 (Okl.App. 1981). The burden rests on the plaintiff in the instant case, therefore, to prove that defendant has had the "minimum contacts" necessary with the state of Oklahoma to provide the basis for this court to exercise personal jurisdiction over the defendant.

Plaintiff has submitted a two-page affidavit for the purpose of establishing that defendant had sufficient contacts with Oklahoma to allow this court to exercise personal jurisdiction. In ¶3 of the affidavit, plaintiff states that he has personal knowledge that Herbert Wendell ("Wendell"), president of defendant CPS Inc., made trips to Tulsa to conduct business on behalf of CPS. Plaintiff further states that this business "consisted mainly of soliciting the lease and sale of three hundred fifty (350) rails cars previously purchased by CPS from Cities."

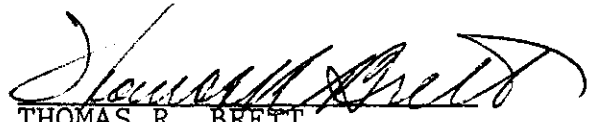
Defendant admits that CPS and Cities did conduct business with respect to purchase of rail cars, but states none of these cars were bought in Oklahoma or sold in Oklahoma. In addition, the business relationship between CPS and Cities is not the basis for the instant lawsuit. The Oklahoma Supreme Court has held that for a nonresident defendant to be sued in Oklahoma, the cause of action must arise out of the same acts which provide the basis for the Oklahoma court's exercise of personal jurisdiction.

All American Car Wash, Inc. v. National Pride Equipment, Inc., 550 F.Supp. 166 (W.D. Okl. 1981); George v. Strick Corp., 496 F.2d 10 (10th Cir. 1974). If the controversy at issue does not arise out of the defendant's activity in the forum state, due process is not offended if the court finds the defendant engaged in continuous and systematic activity within the state. Helicopteros Nacionales de Colombia v. Hall, -- U.S. --, 104 S.Ct. 1868, 80 L Ed 2d 404 (1984).

Here, plaintiff has failed to show "continuous and systematic" activity in Oklahoma by defendant and has failed to show the controversy at issue arose out of the contacts defendant did have with the state. In ¶4 of his affidavit, plaintiff states that in 1983, Wendell, acting on behalf of CPS, agreed to pay plaintiff a finder's fee if he located a buyer for defendant's rail cars. But plaintiff does not state where this agreement was formulated. Nothing in the affidavit indicates that Oklahoma had any connection with this alleged agreement. In ¶5, plaintiff states that in 1983, he was responsible for locating a buyer for defendant's rail cars. Again, however, plaintiff offers nothing to connect this sale to

Oklahoma. In ¶6, plaintiff states that he participated in preliminary negotiations between the buyer he located and CPS for the sale of the rail cars, but plaintiff provides no information indicating that any such negotiation occurred in Oklahoma. The only Oklahoma connection alleged in plaintiff's affidavit is in ¶3 in which he states defendant visited Tulsa in 1983 to conduct business in a matter unrelated to plaintiff's claim in this lawsuit. This is insufficient contact for this court to exercise personal jurisdiction over the defendant in this case. For this reason, defendant's Motion to Dismiss is granted.

IT IS SO ORDERED, this 14<sup>th</sup> day of October, 1985.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OCT 4 1985

Jack G. Silver, Clerk  
U.S. DISTRICT COURT

AUTO-TROL TECHNOLOGY CORPORATION,  
a Colorado corporation,  
  
Plaintiff,

vs.

No. 84-C-768-E

DESIGN GRAPHICS, INC., an  
Oklahoma corporation; WENDELL H.  
MELROSE; WILLIAM A. NORRIS; and  
DANIEL DURBIN,

Defendants,

and

PHILLIPS PETROLEUM COMPANY,  
  
Additional Defendant.

ORDER

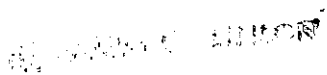
Based on the written stipulation of the parties, the Plaintiff, Auto-trol Technology Corporation, Defendants, Wendell H. Melrose, Willie A. Norris, Daniel Durbin, Design Graphics, and Additional Defendants, Phillips Petroleum Company, and on the pleadings and evidence previously submitted herein, it is hereby ORDERED:

1. The Court has issued a Permanent Injunction against the Defendants as requested by the Plaintiff. The Plaintiff's damage claims against the Defendants are dismissed with prejudice.

2. The Defendants' Counterclaims against Plaintiff and Defendants' Cross-claims and Counterclaims against Phillips Petroleum Company are dismissed with prejudice.

3. Each party shall bear its own costs and attorneys' fees.

Dated this \_\_\_\_\_ day of October, 1985.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

CHARLES E. MARTIN,

Plaintiff,

-VS-

**AETNA LIFE INSURANCE COMPANY,**

Defendant.

661 - 8 1025

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

No. 85-C-586-E

## ORDER OF REMAND

NOW, on this 11th day of September, 1985, the above styled case comes on for hearing for initial status conference before the undersigned United States District Judge. Plaintiff appears by his attorney, John L. Harlan; defendant appears by it's attorney, Stephen C. Wilkerson. The Court, after hearing argument of counsel and over the objection of defendant, finds that the amount in controversy at the time this case was removed from the District Court of Creek County, Bristow Division, State of Oklahoma, was less than \$10,000.00, exclusive of interest and costs, and that therefore this Court did not and does not have jurisdiction over this case. Therefore, the Court enters it's Order, sua sponte, remanding this case back to the Court from whence it came.

COPIES SENT TO COMPANY  
DATE: 9-30-85  
D.C.

IT IS, THEREFORE, ORDERED that the above entitled action  
be and it is hereby remanded to the District Court of Creek  
County, Bristow Division, State of Oklahoma.

**S/ JAMES O. ELLISON**

---


JAMES O. ELLISON  
United States District Judge

APPROVED AS TO FORM:



---

JOHN L. HARLAN  
Attorney for Plaintiff



---

STEPHEN C. WILKERSON  
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

OCT -3 1985

JACK G. LIVES, CLERK  
U.S. DISTRICT COURT

HOMART DEVELOPMENT COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JOSEPH T. BROWN and )  
CHERYL J. SCHLOTMAN, )  
Administratrix of the Estate of )  
James Scholtman, Jr., Deceased, )  
as individuals and as partners, )  
d/b/a WORLD OF POPCORN, )  
 )  
Defendants. )

No. 85-C-738-C ✓

O R D E R

Now before the Court for its consideration is the motion of the plaintiff Homart Development Company to remand the above-styled and numbered case which was removed by defendants from the District Court of Washington County, Oklahoma, on August 6, 1985.

Defendants removed the action asserting jurisdiction under 28 U.S.C. §1332, diversity of citizenship and an amount in controversy exceeding \$10,000, exclusive of interest and costs. In its motion to remand, plaintiff asserts that the Court lacks jurisdiction because the amount in controversy is less than \$10,000.00.

On July 29, 1985, plaintiff filed suit against the defendants in state court seeking restitution of premises owned by plaintiff and leased to defendants and seeking judgment for \$5,244.66 accrued rent, accruing rent, cost and attorney fees pursuant to the Oklahoma Forcible Entry and Detainer Act, 12 O.S. §1148.1 et seq. Plaintiff therefore asserts the Court lacks

jurisdiction since the value of plaintiff's claim against the defendant is \$5,244.66.

In its response, defendants contend the amount is controversy exceeds \$10,000.00 when the following facts are considered:

- (1). The minimum annual rental pursuant to the lease agreement is \$12,672.00.
- (2) The gross rental for the five-year lease duration is \$63,360.00.
- (3) Rent is accruing monthly in an amount of \$1,056.00
- (4) Defendants have made leasehold improvements in the value of \$59,988.79, which they are alleging as a counterclaim against plaintiff.
- (5) Plaintiff has the option of seeking against defendant a sum exceeding \$50,000.00 under the terms of the lease.
- (6) Defendants counterclaim against plaintiff for misrepresentation and fraud will exceed \$10,000.00.

It is clear that an action sought to be removed on the basis of diversity of citizenship under 28 U.S.C. §1441 is removable only if the amount in controversy requirement of 28 U.S.C. §1332 has been met. Plaintiff states that the amount due under the lease is less than \$10,000.00 both as of the commencement of this action and as of the time of removal. Defendant does not dispute the sums accrued under the lease but contends instead that the validity of the lease agreement and all its incorporating terms are in dispute and should be included in determining the jurisdictional amount.


In a case sought to be removed from state to federal court the right to removal is decided by the pleadings, viewed as of the time when the petition for removal was filed. Bowman v. Iowa State Travelers Mutual Assurance Co., 449 F.Supp. 60, 62 (E.D. Okla. 1978). The grounds for removal must inhere in the plaintiff's claim, rather than in a defense or counterclaim. Bowman,

supra citing C. Wright, Federal Courts, 152 (3d ed. 1976). The test to determine the existence of the amount in controversy is not the sum ultimately found to be due, but the sum demanded, in good faith by the plaintiff. Fehling v. Cantonwine, 522 F.2d 604, 605 (10th Cir. 1975).

Under Oklahoma law in a forcible entry and detainer action defendant tenants may not assert counterclaims seeking money judgments based on claims for damages or alleged breaches of the lease agreement. Schuminsky v. Field, 606 P.2d 1133 (Okla. 1980). The objective of forcible entry and detainer statutes is restitution of premises, and damages recoverable by reason of waste and injury plus rents and profits due. For diversity jurisdiction purposes, the possible value of future installments of rent may not be considered in ascertaining the amount in controversy in unlawful detainer actions. Rubel-Jones Agency, Inc. v. Jones, 165 F.Supp. 652, 655 (D.C. Mo. 1958).

Therefore the Court finds from the face of the petition filed in state court, and in consideration of the applicable law, that plaintiff's motion to remand for lack of jurisdiction under 28 U.S.C. §1332 is hereby granted.

IT IS SO ORDERED this 3<sup>rd</sup> day of October, 1985.

  
H. DALE COOK  
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

ANN M. and FRANK D. STREIGHTOFF,  
Texas Individuals,

Plaintiffs,

v.

EDDIE MCDONUGH, an Oklahoma  
Individual, AL JOHNSON,  
an Oklahoma Individual, and  
EMAC OIL AND GAS, INC., an  
Oklahoma Corporation,

Defendants.

Case No. 85-C-383-B

FILED

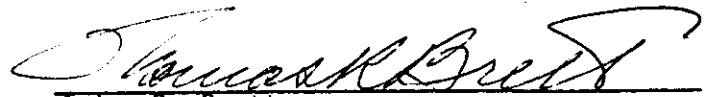
OCT 3 - 1985

Jack C. Smith, Jr.  
U. S. DISTRICT COURT

JUDGMENT

Comes now the Court and after a hearing on this matter and review of Findings of Fact and Conclusions of Law entered contemporaneously thereto:

It is therefore ordered, adjudged and decreed that the Plaintiffs, Streightoffs, are awarded a judgment against the Defendants, Johnson and McDonugh, jointly and severally, for the sum of twelve thousand five hundred dollars (\$12,500); interest on the sum of twelve thousand five hundred dollars (\$12,500) at the rate of 7.91% per annum from the date of judgment in this matter until the compensatory award of \$12,500 is satisfied; and the sum of \$219.50 as representing costs in this litigation.

  
Judge R. Brett

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SHELTER AMERICA  
CORPORATION,

Plaintiff,

v.

ROBERT D. PARKS and  
DEBRA L. PARKS,

Defendants.

No. 85-C-601-C

1985-09-30  
U.S. DISTRICT COURT

*Notice of* DISMISSAL

Plaintiff, Shelter America Corporation, pursuant to Rule 41(a)(1), Federal Rules of Civil Procedure, hereby dismisses the above-entitled action, with prejudice, insofar as it relates to the claims of the Plaintiff described in its Complaint which existed on or before the date hereof.

Dated the 30<sup>th</sup> day of September 1985.

ENGLISH, JONES & FAULKNER

By:

*Steve Rankin*  
Steve Rankin  
1701 Fourth National Building  
Tulsa, Oklahoma 74119  
(918) 582-1564

ATTORNEYS FOR PLAINTIFF,  
SHELTER AMERICA CORPORATION

CERTIFICATE OF MAILING

I hereby certify that on the 3<sup>rd</sup> day of October, 1985, a true and correct copy of the foregoing Dismissal was mailed to the following parties:

Robert D. Parks and  
Debra L. Parks  
802 North Division, Lot #1  
Sapulpa, Oklahoma 74066,

with proper postage thereon.

*Steve Rankin*  
Steve Rankin

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHN C. OXLEY,

Plaintiff,

vs.

CNR RESOURCES, INC., et al.,

Defendants and  
Third Party Plaintiff,

vs.

GENE G. HEAPE and CLAYTON  
E. LEE,

Third Party Defendants.

83-C-359-C  
No. ~~82-C-992-D~~

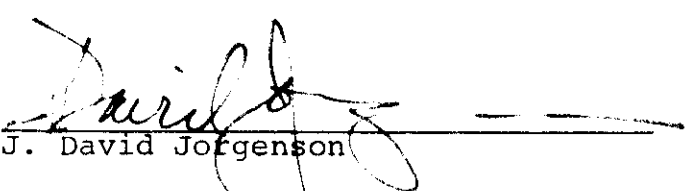
**FILED**

OCT 3 1985

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

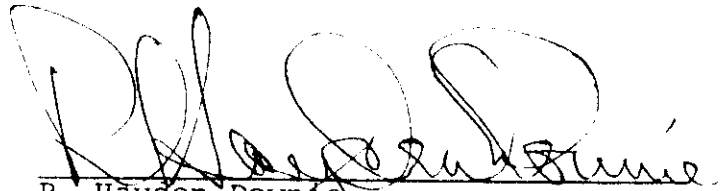
STIPULATION OF DISMISSAL

Plaintiff John C. Oxley, Defendant CNR Resources, Inc.,  
and Third Party Defendants Clayton E. Lee and Gene G. Heape,  
pursuant to Fed.R.Civ.P. 41(a)(1), stipulate to the dismissal of,  
and hereby dismiss, the above captioned action, including all  
claims, counterclaims, third party claims and cross-claims  
asserted herein, with prejudice, each party to bear its own costs  
and attorneys' fees.

  
J. David Jorgenson

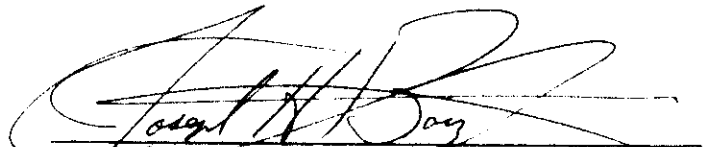
CONNER & WINTERS  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-5711

Attorney for Plaintiff  
JOHN C. OXLEY

  
R. Hayden Downie

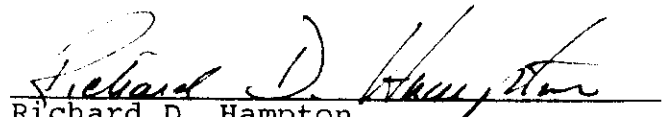
SNEED, LANG, ADAMS, HAMILTON,  
DOWNIE & BARNETT  
1850 South Boulder  
Tulsa, Oklahoma 74119

Attorney for Defendant  
CNR RESOURCES, INC.

  
Joseph H. Bocock

MCAFEE & TAFT  
Fifth Floor, 100 Park Avenue  
Oklahoma City, Oklahoma 73102

Attorney for Defendant  
CLAYTON E. LEE

  
Richard D. Hampton

109 North Walker  
Oklahoma City, Oklahoma 73102

Attorney for Defendant  
GENE G. HEAPE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT -3 1985

JACK C. OLIVER, CLERK  
U.S. DISTRICT COURT

TRINITY BROADCASTING, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 83-C-642-C  
 )  
REECE MORREL, DONALD HERROLD )  
and J. CHARLES SHELTON, )  
 )  
Defendants. )

and

TRINITY BROADCASTING COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 82-C-1188-C ✓  
 )  
LEEEO OIL COMPANY, an Oklahoma )  
corporation, and LEE ELLER )  
 )  
Defendants. )

O R D E R

Now before the Court for its consideration is the motion of plaintiff Trinity Broadcasting Company for summary judgment filed on April 29, 1985. The Court has no record of a response to this motion from defendants Lee Eller and Leeco Oil Company. Rule 14(a) of the local Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) Briefs. Each motion, application and objection filed shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Memoranda in opposition to such motion and objection shall be filed within ten (10) days after the filing of the motion or objection, and any reply memoranda shall be filed within ten (10) days thereafter. Failure to comply with this paragraph will constitute

waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings.

Therefore, in that defendants Lee Eller and Leeco Oil Company have failed to comply with local Rule 14(a) and no responsive pleading has been filed to date herein, the Court concludes that Lee Eller and Leeco Oil Company have waived any objection to said motion and has confessed the matters contained therein.

Accordingly, it is the Order of the Court that plaintiff's motion for summary judgment over and against Lee Eller and Leeco Oil Company should be and hereby is granted.

It is the further Order of the Court that Lee Eller and Leeco Oil Company are in default for failure to attend the pretrial conference set on October 1, 1985, in consolidated cases number 82-C-1188 and 83-C-642. Therefore, it is the Order of the Court that default judgment is hereby entered against Lee R. Eller and Leeco Oil Company and case number 82-1188 is dismissed as to all issues raised. Accordingly, default judgment is granted in favor of plaintiff Trinity Broadcasting Company over and against defendants Lee R. Eleer and Leeco Oil Company.

IT IS SO ORDERED this 3 day of October, 1985.

  
H. DALE COOK  
Chief Judge, U. S. District Court

*Entered*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 3 1985

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

DOVER ELEVATOR COMPANY,  
a Delaware corporation,  
Plaintiff,

vs.

No. C-85-686B

STRATTON OF FLORIDA,  
GENERAL CONTRACTORS, INC.,  
and ST. PAUL FIRE & MARINE  
INSURANCE COMPANY,  
Defendants.

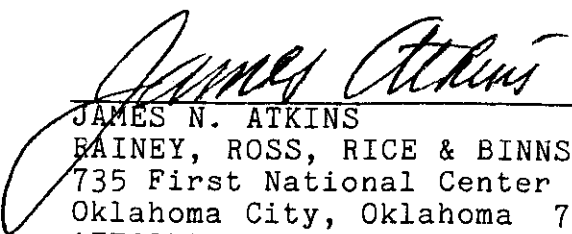
ORDER OF DISMISSAL WITH PREJUDICE

This matter comes before the Court on the joint stipulation of the parties that the above styled case be dismissed with prejudice to its further filing. The parties have represented to the Court that the case has been settled to the mutual satisfaction of the parties and should be dismissed with prejudice to its further filing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above styled case be and is hereby dismissed with prejudice to its further filing.

S/ THOMAS R. BRETT

United States District Judge

  
JAMES N. ATKINS  
BAINEY, ROSS, RICE & BINNS  
735 First National Center West  
Oklahoma City, Oklahoma 73102  
ATTORNEY FOR DOVER ELEVATOR COMPANY

  
C. WALKER INGRAHAM

1140 Monarch Plaza  
3414 Peachtree Road, N.E.  
Atlanta, Georgia 30326  
(404) 231-9800  
ATTORNEY FOR STRATTON OF FLORIDA  
AND ST. PAUL FIRE & MARINE INSURANCE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OCT -3 1985

MARK J. EVANS,

Plaintiff,

v.

JOHN McBRIDE, doing business as  
M D SYSTEM SOUND, and WILLIAM J.  
ANTHONY,

Defendants.

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

No. 84-C-985-BT ✓

J U D G M E N T

On October 2, 1985, the jury returned Verdict Form No. 1 herein which found the plaintiff, Mark J. Evans, 51% negligent and the defendant William J. Anthony 49% negligent, and further found the defendant William J. Anthony was not acting as an employee of John McBride at the time of the occurrence but was an independent contractor.

In keeping with said verdict, Judgment is hereby entered in favor of the defendants, John McBride, doing business as M D System Sound, and William J. Anthony, and against the plaintiff, Mark J. Evans; and the plaintiff's claim is hereby dismissed. The indemnity claim of defendant John McBride over and against the defendant, William J. Anthony, is therefore moot. Costs are hereby assessed against the plaintiff if timely applied for.

ENTERED this 3<sup>rd</sup> day of October, 1985.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

TULSA, OKLAHOMA 74103

JACK C. SILVER  
CLERK

(918) 581-7796  
(FTS) 736-7796

October 2, 1985

Mr. John Thomas Hall  
427 S. Boston, Suite 650  
Tulsa, OK 74103

Mr. Earl E. Latimer, III  
Tulsa County Jail  
Tulsa, OK 74103

Mr. David Moss  
District Attorney  
406 Tulsa County Courthouse  
Tulsa, OK 74103

RE: 85-C-856-C; EARL E. LATIMER, III  
vs  
FRANK THURMAN & HONORABLE JAY DALTON

Gentlemen:

Please be advised that on this date Judge H. Dale Cook entered the following Minute Order in the above styled case:

"It is ordered that upon motion of the Plaintiff, the petition to dismiss the complaint, the Court sustains the motion to dismiss--CASE IS DISMISSED."

If you have any questions, please contact the undersigned.

Very truly yours,

JACK C. SILVER, CLERK

By: *Anita Muncrief*  
Anita Muncrief, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

BELIEVERS FAMILY FELLOWSHIP, )  
Tulsa, Oklahoma; GLENN ELLIS, )  
Pastor, Believers Family )  
Fellowship; RHONDA BOTTS; )  
JOHN BROWN; BRUCE DAVIS; )

Plaintiffs, )

vs. )

OKLAHOMA STATE DEPARTMENT OF )  
HUMAN SERVICES, et al, )

Defendants. )

No. 85-C-743-C

FILED

SEP -2 1985

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

O R D E R

Now before the Court for its consideration is the application of plaintiffs for a temporary restraining order, filed herein September 4, 1985, and the motion of defendants Moss and Lyons to dismiss, filed herein September 12, 1985. Pursuant to the hearing held September 13, 1985, the Court finds these matters ready for determination.

Plaintiffs filed this action on August 8, 1985, alleging defendants violated their constitutional rights under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution. Additionally, plaintiffs allege deprivations and violations of their constitutional rights under 42 U.S.C. §1983.

Plaintiffs requested injunctive relief against all defendants, to restrain and enjoin them from proceeding against plaintiffs in any type of legal action, from attempting to apply and enforce the Oklahoma Child Care Facilities Licensing Act

(Title 10 O.S.1981 §401 et seq.) against them, and from keeping the plaintiffs' books and records seized in July, 1985, by some defendants pursuant to a search warrant. Plaintiffs additionally request a declaratory judgment to adjudge the child care statute unconstitutional as applied to plaintiffs' facility. Plaintiffs also request compensatory and punitive damages, along with costs and attorney fees.

On August 23, 1985, the State of Oklahoma filed suit in state district court against plaintiff Believers Family Fellowship, asking the court issue an injunction to enjoin plaintiffs from maintaining and operating an unlicensed child care facility and from violating health and safety standards. A September 6 hearing setting was passed in deference to this Court's September 13, 1985, hearing setting. The state proceedings are still pending and, according to the parties' stipulation, involve identical issues.

The issuance of a temporary restraining order is a matter that lies within the discretion of the Court. Jimenez v. Barber, 252 F.2d 550 (9th Cir. 1958). Defendants represented to the Court at the hearing that the only actions contemplated by them to be taken against any plaintiffs were to be court actions. Plaintiffs made no showing of immediate and irreparable injury, loss or damage. Accordingly, the application for a temporary restraining order should be denied.

In their motion to dismiss, defendants David Moss, Tulsa County District Attorney, and Assistant District Attorney, Mark Lyons, assert, among other arguments, that this Court should

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

7-1-85  
JUL -2 1985

BARRY SWANSON and BILLIE SWANSON,  
Plaintiffs,

vs.

ROBERT W. BENSON,

Defendant.

No. 85-C-466-C

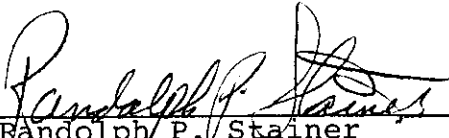
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

DISMISSAL

COME NOW the Plaintiff, by and through their attorney  
of record, and herewith dismiss the above styled and numbered  
cause with prejudice.

STAINER AND STAINER

By:

  
Randolph P. Stainer  
221 South Nogales  
Tulsa, Oklahoma 74127  
918/584-6404

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:

KENNETH FLOYD PATTON and  
MARGIE SUE PATTON,

Debtors,

FRED W. WOODSON, TRUSTEE,

Plaintiff,

v.

FIRST NATIONAL BANK OF PRYOR CREEK,  
PRYOR, OKLAHOMA,

Defendant.)

No. 85-C-863-B ✓

Case No. 85-00622  
Chapter 7

Adversary No. 85-0180

O R D E R

This matter comes before the Court on defendant/appellant First National Bank of Pryor Creek's motion for leave to appeal an interlocutory order of the United States Bankruptcy Court for the Northern District of Oklahoma. For the reasons set forth below, appellant/defendant's motion for leave to appeal is denied.

An appeal of an interlocutory order may be taken to a district court under 28 U.S.C. §158(a), but only with leave of the court. The burden of seeking leave to appeal an interlocutory order from the bankruptcy court is that of the party seeking to appeal. 1 Collier on Bankruptcy, ¶3.03[6][d].

In this case, defendant/appellant seeks district court review of the bankruptcy court's July 16, 1985 order denying defendant/appellant's motion for certification of a question of law to the Oklahoma Supreme Court. On August 29, 1985, the bankruptcy court judge denied defendant/appellant's motion for reconsideration of the motion for certification.

FILED  
OCT -2 1985  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

In considering the application for leave to appeal, the function and duty of the district court is not to consider the merits of the order to be appealed but rather to determine whether the bankruptcy court has stated some rational or reasonable basis for its decision or whether, on the other hand, the applicant has shown that the bankruptcy court acted arbitrarily or capriciously or abused its discretion. In re Sentinel Bonding Agency, Inc., 7 C.B.C.2d 1070 (W.D.Okla. 1981).

An order declining certification of a question of law to the Oklahoma Supreme Court under 20 Okl.St.Ann. §1602 is well within the discretion of the United States Bankruptcy Court. Title 20 Okl.St.Ann. §1602 is merely an enabling statute, giving the State Supreme Court the authority to answer questions the federal courts determine should be certified. It does not, as defendant/appellant appears to argue, mandate certification by the federal court. Upon consideration of the exhibits filed herein with defendant/appellant's motion, the court concludes defendant/appellant has not met its burden of showing that the bankruptcy court acted arbitrarily or capriciously or abused its discretion in denying the motion to certify.

Defendant/appellant's motion for leave to appeal an interlocutory order of the United States Bankruptcy Court for the Northern District of Oklahoma is denied.

IT IS SO ORDERED this 2nd day of October, 1985.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

*Entered*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DISCOUNT TIRES OF OKLAHOMA,  
INC., an Oklahoma corporation,

Plaintiff,

vs.

SOUTHWESTERN BELL TELEPHONE  
COMPANY, a Missouri corporation,

Defendant.

No. 84-C -374-BT

J U D G M E N T

This action came on before the Court on defendant's motion for summary judgment, and the issues having been duly heard and summary judgment in favor of defendant having been duly rendered,

IT IS ORDERED AND ADJUDGED that the plaintiff, Discount Tires of Oklahoma, Inc., take nothing, that the action be dismissed on the merits, and that the defendant, Southwestern Bell Telephone Company, recover of the plaintiff its costs of action, if timely applied for.

Dated at Tulsa, Oklahoma, this 2nd day of October, 1985.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

JACQ. C. SHAW, CLERK  
U.S. DISTRICT COURT

OCT -2 1985

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FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

OCT - 2 1985

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JOHN A. DeSALVO,

Plaintiff

v.

INTERNAL REVENUE SERVICE,

Defendant

CIVIL ACTION NO. 85-C-22-E

ORDER

This case came before the undersigned United States District Judge on September 23, 1985, on the parties' cross-motions for summary judgment. John A. DeSalvo, plaintiff, represented himself; Will E. McLeod, trial attorney of the Tax Division, U.S. Department of Justice represented defendant.

Plaintiff filed this Freedom of Information Act suit seeking to enjoin the IRS from continuing to withhold from plaintiff 98 pages of documents within the possession and control of the Internal Revenue Service. Defendant opposed this action because the documents constitute return information as defined in 26 U.S.C., Section 6103(b)(2) and are prohibited from disclosure under 26 U.S.C., Section 6103(e)(7) because the Secretary of the Treasury has determined that disclosure would seriously impair Federal tax administration.

By order dated March 20, 1985, this Court advised the parties that the Zale rational was applicable to this action. Under the Zale rational, 26 U.S.C., Section 6103 is the sole standard governing disclosure or non-disclosure of tax return information notwithstanding the Freedom of Information Act. White v. IRS, 528 F. Supp. 119 (N.D. Ohio 1981), affirmed, 707 F. 2d 897 (6th Cir. 1983). Under Section 6103, non-disclosure is appropriate when the materials requested are "return information" and the Secretary has made a good faith determination that disclosure would seriously impair Federal tax administration. The IRS has the burden of proving both conditions upon judicial review.

In order to insure an effective judicial review of the IRS's decision not to disclose the information requested under Section 6103(e)(7), the IRS must provide evidence to the Court sufficient to enable the Court to determine if the documents are return information and that the IRS's determination was not arbitrary or an unconscionable abuse of discretion. De novo review is neither necessary nor desirable under such circumstances. Zale Corporation v. IRS, 481 F. Supp. 486, 490 (D.C. D.C. 1979).

In White, the court ordered a Vaughn index. In Zale, the Court had before it affidavits of IRS officials and conducted an in camera examination of some documents selected at random from the total package submitted by the IRS. In this case, the Court ordered a Vaughn index, to be submitted in camera, or documentation which would support a finding by this Court that preparation of a Vaughn index is not necessary. In response to the Court's order, defendant submitted the affidavits of James E. Wright, Chief of the Examination Division, Oklahoma City District, IRS, and Craig A. Etter, an attorney in the Disclosure Litigation Division, Office of Chief Counsel, IRS. Together, the two affidavits identified each document, described the kind of information found in each document and gave the reasons why each document is being withheld from plaintiff. After review of these affidavits, the Court is satisfied that there is sufficient documentation before it on which to base a decision as to whether the withholding of information is appropriate under Section 6103(e) (7).

After careful consideration of the record, the applicable authorities and the representations of the parties at the hearing,

It is ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff's motion for summary Judgment is denied because the Zale rationale is applicable to this case.

2. Defendant's motion for summary judgment is granted because the documents at issue are return information and the IRS's decision to withhold the documents was rational and has support in the record and therefore was not an arbitrary or unconscionable abuse of discretion.

3. The Clerk shall enter judgment hereon for defendant, the Internal Revenue Service, and against plaintiff, John A. DeSalvo.

It is so ORDERED

Date: \_\_\_\_\_

S/ JAMES O. ELLISON

JAMES O. ELLISON  
United States District Judge

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing proposed Order has this 27<sup>th</sup> day of September, 1985, been served on plaintiff, pro se, addressed as follows:

John A. DeSalvo, Pro Se  
P.O. Box 700071  
Tulsa, Oklahoma 74170



---

EDWARD J. SNYDER

*Entered*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT - 1 1985 *ag*

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

FREDDIE SCOTT,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

No. 85-C-402-B ✓

J U D G M E N T

This matter came on before the Court on defendant's motion for summary judgment, and the issues having been duly considered and defendant's motion having been granted,

IT IS ORDERED AND ADJUDGED that the plaintiff, Freddie Scott, take nothing, and that the action be dismissed on the merits.

DATED at Tulsa, Oklahoma, this 30 day of Sept.,  
1985.

*Thomas R. Brett*

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT -1 1985

ROY T. RIMMER, JR.,

Plaintiff,

vs.

HALE C. LAY,

Defendant.

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)  
)  
)

No. 84-C-67-C

JACK G. SILVER, CLERK  
U.S. DISTRICT COURT

J U D G M E N T

This action came on for trial before the Court, the issues having been duly tried and a decision having been duly rendered as set forth in the Findings of Fact and Conclusions of Law,

IT IS SO ORDERED AND ADJUDGED, as to plaintiff's first cause of action requesting injunctive relief, that a permanent injunction be and is hereby entered enjoining both parties from selling, transferring, or otherwise disposing of their stock in Meridian Energy, Inc., without first having placed thereon the restrictive endorsement which follows:

The shares of stock represented by this Certificate are subject to all the terms and restrictions contained in a shareholder agreement dated May 18, 1983, by and between Hale C. Lay and Roy T. Rimmer, Jr., a copy of which is on file at the office of the Corporation.

IT IS FURTHER ORDERED AND ADJUDGED, as to plaintiff's second cause of action, that plaintiff is hereby awarded judgment for specific performance of the "Exhibit B" agreement. The Court orders that the parties pursue their rights based on their share

of ownership to fulfill the agreement provisions that the articles of incorporation and bylaws of the company be amended to establish a four-member board of directors, each having an equal preemptive right of all stockholders; a change of the quorum requirements of shareholder and director meetings; and, to establish a unanimous vote of all shareholders for any subsequent amendments to the corporate articles or bylaws.

The Court further orders that the parties take appropriate measure to fulfill the agreement provision providing for Rimmer and his wife to be elected directors of Meridian and for Rimmer to be employed as vice president of Meridian at the rate of \$5,000.00 per month.

IT IS FURTHER ORDERED AND ADJUDGED that judgment should be and hereby is entered on behalf of Roy T. Rimmer, Jr. as against defendant Hale C. Lay for unpaid salary, pursuant to the "Exhibit B" agreement, in the amount of \$122,200.00, together with interest thereon at the legal rate from May 18, 1983, to this date, until paid.

IT IS FURTHER ORDERED AND ADJUDGED, as to plaintiff's third cause of action for breach of contract damages regarding the "Exhibit C" gas processing plant purchase agreement, that judgment should be and hereby is entered on behalf of plaintiff Roy T. Rimmer, Jr. as against defendant Hale C. Lay in the amount of \$394,781.12, together with interest thereon at the legal rate from November 12, 1984, to this date, until paid.

IT IS FURTHER ORDERED AND ADJUDGED that judgment should be and hereby is entered on behalf of plaintiff and against the

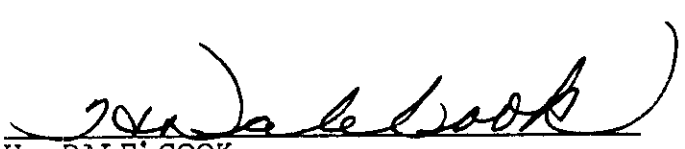
defendant on defendant's counterclaim for interference with business relations and for injury to business reputation.

Pursuant to contract provisions, plaintiff Rimmer, as the prevailing party, is hereby entitled to an award of reasonable attorney fees.

Absent an affidavit from plaintiff's attorneys listing the factors enumerated in Waters v. Wisconsin Steel Works of Internat'l Harvester Co., 502 F.2d 1309 (7th Cir. 1974), the amount of the attorney fees cannot be determined. See also Love v. Mayor, City of Cheyenne, Wyo., 620 F.2d 235 (10th Cir. 1980); Comancho v. Colorado Electronic Tech. College, 590 F.2d 887 (10th Cir. 1979); State ex rel. Burk v. City of Oklahoma City, 598 P.2d 659 (Okla. 1979).

Plaintiff is hereby granted twenty (20) days within which to submit proper documentation to the Court regarding attorney fees and costs. Defendant is granted ten (10) days thereafter in which to respond.

IT IS SO ORDERED this 15 day of October, 1985.

  
H. DALE COOK  
Chief Judge, U. S. District Court

*Entered*

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

SHERMAN E. SMITH, Administrator )  
with Will Annexed for the Estate )  
of Edward A. Smith, )  
Plaintiff, )  
vs. )  
V. W. MCKNAB, )  
Defendant. )

Case No. 84-C-80-BT ✓

**FILED**

OCT - 1 1985 *WJ*

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other prupose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 30<sup>th</sup> day of SEPTEMBER, 1985.

*Thomas R. Brett*  
UNITED STATES DISTRICT JUDGE  
THOMAS R. BRETT

*44*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CUTLERY WORLD CORPORATION,  
an Illinois Corporation,

Plaintiff,

vs.

SOONER CUTLERY, INC.,  
BRYAN PATZKOWSKI, and  
MIKE BALDRACHI,

Defendants.

No. 85-C-660-E

ORDER OF DISMISSAL

This Order is entered on this 30<sup>th</sup> day of September,  
1985, upon Motion of the Plaintiff.

This Court finds that the Defendant, MIKE BALDRACHI,  
should be properly dismissed from the above captioned lawsuit.

by JAMES O. ELLISON  
JAMES O. ELLISON, Judge  
United States District Court  
Northern District of Oklahoma